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## SENATE BILL No. 67

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 32-25.5.

**Synopsis:** Uniform common interest ownership act. Establishes procedures concerning the formation, management, and termination of common interest communities, including condominiums, planned communities, and real estate cooperatives. Specifies that the procedures apply to all common interest communities formed after June 30, 2008, with certain exceptions. Requires disclosure of certain facts to buyers about common interest property for sale.

**Effective:** July 1, 2008.

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January 8, 2008, read first time and referred to Committee on Judiciary.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## SENATE BILL No. 67

A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 32-25.5 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
3 2008]:

### 4 ARTICLE 25.5. COMMON INTEREST OWNERSHIP

#### 5 Chapter 1. Applicability, Definitions, and General Provisions

6 Sec. 1. This article may be cited as the Uniform Common  
7 Interest Ownership Act.

8 Sec. 2. Applicability of this article is governed by IC 32-25.5-2.

9 Sec. 3. Except as otherwise provided in this article or the context  
10 otherwise requires, the definitions in this section apply throughout  
11 this article:

12 (1) "Affiliate of a declarant" means a person who controls, is  
13 controlled by, or is under common control with a declarant.

14 A person:

15 (A) "controls" a declarant if the person:

16 (i) is a general partner, an officer, a director, or an  
17 employer of the declarant;

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(ii) directly or indirectly or acting in concert with one (1) or more other persons, or through one (1) or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interest in the declarant;

(iii) controls the election of a majority of the directors of the declarant; or

(iv) has contributed more than twenty percent (20%) of the capital of the declarant; and

**(B) "is controlled by" a declarant if the declarant:**

(i) is a general partner, an officer, a director, or an employer of the person;

(ii) directly or indirectly or acting in concert with one (1) or more other persons, or through one (1) or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interest in the person;

(iii) controls in any manner the election of a majority of the directors of the person; or

(iv) has contributed more than twenty percent (20%) of the capital of the person.

Control does not exist if the powers described in this subdivision are held solely as security for an obligation and are not exercised.

**(2) "Allocated interests" means the following interests allocated to each unit:**

**(A) In a condominium, the undivided interest in the common elements, the common expense liability, and votes in the association.**

**(B) In a cooperative, the common expense liability and the ownership interest and votes in the association.**

**(C) In a planned community, the common expense liability and votes in the association.**

**(3) "Association" or "unit owners' association" means the unit owners' association organized under IC 32-25.5-3-1.**

**(4) "Common elements" means:**

**(A) in the case of:**

(i) a condominium or cooperative, all parts of the common interest community other than the units; and

(ii) a planned community, any real estate within a planned community which is owned or leased by the association, other than a unit; and

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(B) in all common interest communities, any other interests in real estate for the benefit of unit owners that are subject to the declaration.

(5) "Common expenses" means expenditures made by, or financial liabilities of, the association, together with any allocations to reserves.

(6) "Common expense liability" means the liability for common expenses allocated to each unit under IC 32-25.5-2-7.

(7) "Common interest community" means real estate with respect to which a person, because of the person's ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration. "Ownership of a unit" does not include holding a leasehold interest of less than twenty (20) years in a unit, including renewal options.

(8) "Condominium" means a common interest community in which parts of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those parts. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

(9) "Conversion building" means a building that at any time before creation of the common interest community was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

(10) "Cooperative" means a common interest community in which the real estate is owned by an association, each of whose members is entitled by virtue of the member's ownership interest in the association to exclusive possession of a unit.

(11) "Dealer" means a person in the business of selling units for the person's own account.

(12) "Declarant" means a person or group of persons acting in concert who:

(A) as part of a common promotional plan, offers to dispose of the person's or the group's interest in a unit not previously disposed of; or

(B) reserves or succeeds to any special declarant right.

(13) "Declaration" means an instrument, however denominated, that creates a common interest community, including any amendments to the instrument.

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**(14) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to:**

**(A) add real estate to a common interest community;**

**(B) create units, common elements, or limited common elements within a common interest community;**

**(C) subdivide units or convert units into common elements; or**

**(D) withdraw real estate from a common interest community.**

**(15) "Dispose" or "disposition" means a voluntary transfer to a purchaser of a legal or an equitable interest in a unit. The term does not include the transfer or release of a security interest.**

**(16) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.**

**(17) "Identifying number" means a symbol or address that identifies only one (1) unit in a common interest community.**

**(18) "Leasehold common interest community" means a common interest community in which all or a part of the real estate is subject to a lease, the expiration or termination of which will terminate the common interest community or reduce its size.**

**(19) "Limited common element" means a part of the common elements allocated by the declaration or by operation of IC 32-25.5-2-2(2) or IC 32-25.5-2-2(4) for the exclusive use of at least one (1) but less than all of the units.**

**(20) "Master association" means an organization described in IC 32-25.5-2-20, whether or not it is also an association described in IC 32-25.5-3-1.**

**(21) "Offering" means an advertisement, an inducement, a solicitation, or an attempt to encourage a person to acquire an interest in a unit, other than as security for an obligation. The term does not include an advertisement in:**

**(A) a newspaper or other periodical of general circulation; or**

**(B) any broadcast medium to the general public; of a common interest community not located in Indiana if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the common interest community is located.**

**(22) "Person" means an individual, a corporation, a business**

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trust, an estate, a trust, a partnership, an association, a joint venture, a government or governmental subdivision or agency, or other legal or commercial entity.

(23) "Planned community" means a common interest community that is not a condominium or a cooperative. A condominium or cooperative may be part of a planned community.

(24) "Proprietary lease" means an agreement with the association under which a member is entitled to exclusive possession of a unit in a cooperative.

(25) "Purchaser" means a person, other than a declarant or dealer, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than:

(A) a leasehold interest (including renewal options) of less than twenty (20) years; or

(B) as security for an obligation.

(26) "Real estate" means a leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. The term includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water.

(27) "Residential purposes" means use for dwelling or recreational purposes, or both.

(28) "Security interest" means an interest in real estate or personal property, created by contract or conveyance, that secures payment or performance of an obligation. The term includes a lien created by a mortgage, a deed of trust, a trust deed, a security deed, a contract for a deed, a land sales contract, a lease intended as security, an assignment of lease or rents intended as security, a pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

(29) "Special declarant rights" means rights reserved for the benefit of a declarant to do any of the following:

(A) Complete improvements indicated on plats and plans filed with the declaration or, in a cooperative, to complete improvements described in the public offering statement under IC 32-25.5-4-3(a)(2).

(B) Exercise a development right.

(C) Maintain sales offices, management offices, signs

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advertising the common interest community, and models.

(D) Use easements through the common elements for the purpose of making improvements within the common interest community or within real estate that may be added to the common interest community.

(E) Make the common interest community subject to a master association.

(F) Merge or consolidate a common interest community with another common interest community of the same form of ownership.

(G) Appoint or remove an officer of the association or a master association or an executive board member during a period of declarant control.

(30) "Time share" means a right to occupy a unit or any of several units during at least five (5) separated time periods over a period of at least five (5) years, including renewal options, whether or not coupled with an estate or interest in a common interest community or a specified part thereof.

(31) "Unit" means a physical part of the common interest community designated for separate ownership or occupancy, the boundaries of which are described under IC 32-25.5-2-5(a)(5). If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by a unit owner, the interest in the unit that is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession of the unit under a proprietary lease, coupled with the allocated interests of the unit, and the association's interest in the unit is not affected.

(32) "Unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with a lease, the expiration or termination of which will remove the unit from the common interest community, but does not include a person that has an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the owner of a unit created by the declaration. In a cooperative, the declarant is treated as the owner of a unit to which allocated interests have been allocated until that unit has been conveyed to another person.

Sec. 4. (a) Except as expressly provided in this article:

(1) this article may not be varied by agreement; and

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(2) rights conferred by this article may not be waived.

(b) Except as provided in section 7 of this chapter, a declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this article or the declaration.

Sec. 5. (a) In a cooperative, unless the declaration provides that a unit owner's interest in a unit and its allocated interests is real estate for all purposes, the interest is personal property.

(b) In a condominium or planned community:

(1) if there is a unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate; and

(2) if there is a unit owner other than a declarant, each unit must be separately taxed and assessed, and a separate tax or assessment may not be rendered against any common elements for which a declarant has not reserved development rights.

(c) A part of the common elements for which the declarant has reserved a development right must be separately taxed and assessed against the declarant and the declarant alone is liable for payment of those taxes.

(d) If there is no unit owner other than a declarant, the real estate comprising the common interest community may be taxed and assessed in any manner provided by law.

Sec. 6. (a) A building code may not impose a requirement upon a structure in a common interest community that it would not impose upon a physically identical development under a different form of ownership.

(b) In condominiums and cooperatives, a zoning, a subdivision, or another real estate use law, ordinance, or regulation may not prohibit the condominium or cooperative form of ownership or impose a requirement upon a condominium or cooperative that it would not impose upon a physically identical development under a different form of ownership.

(c) Except as provided in subsections (a) and (b), this article does not invalidate or modify a provision of a building code, zoning, subdivision, or other real estate use law, ordinance, rule, or regulation governing the use of real estate.

Sec. 7. (a) If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit owner with a remnant that may not practically or lawfully be used for any

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purpose permitted by the declaration, the award must include compensation to the unit owner for that unit and its allocated interests, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides:

(1) the unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking; and

(2) the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations.

A remnant of a unit remaining after part of a unit is taken under this subsection is a common element.

(b) Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides:

(1) that unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and

(2) the part of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and to the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(c) If part of the common elements is acquired by eminent domain, the part of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, a part of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

(d) The court decree must be recorded in every county in which any part of the common interest community is located.

Sec. 8. The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause, supplement the provisions of this article, except to the extent inconsistent with this article.

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1        **Sec. 9. This article is a general act intended as a unified**  
 2 **coverage of its subject matter and any part of it may not be**  
 3 **construed to be impliedly repealed by subsequent legislation if that**  
 4 **construction can reasonably be avoided.**

5        **Sec. 10. This article shall be applied and construed so as to**  
 6 **effectuate its general purpose to make uniform the law with respect**  
 7 **to the subject of this article among states enacting it.**

8        **Sec. 11. If a provision of this article or the application of this**  
 9 **article to a person or circumstances is held invalid, the invalidity**  
 10 **does not affect other provisions or applications of this article that**  
 11 **may be given effect without the invalid provisions or applications,**  
 12 **and the provisions of this article are severable.**

13        **Sec. 12. (a) A court, upon finding as a matter of law that a**  
 14 **contract or contract clause was unconscionable at the time the**  
 15 **contract was made, may:**

- 16            (1) **refuse to enforce the contract;**  
 17            (2) **enforce the remainder of the contract without the**  
 18            **unconscionable clause; or**  
 19            (3) **limit the application of an unconscionable clause in order**  
 20            **to avoid an unconscionable result.**

21        **(b) If it is claimed, or appears to the court, that a contract or**  
 22 **any contract clause is or may be unconscionable, the parties, in**  
 23 **order to aid the court in making the determination, must be**  
 24 **afforded a reasonable opportunity to present evidence as to:**

- 25            (1) **the commercial setting of the negotiations;**  
 26            (2) **whether a party has knowingly taken advantage of the**  
 27            **inability of the other party reasonably to protect the other**  
 28            **party's interests because of physical or mental infirmity,**  
 29            **illiteracy, inability to understand the language of the**  
 30            **agreement, or similar factors;**  
 31            (3) **the effect and purpose of the contract or clause; and**  
 32            (4) **if a sale, any gross disparity, at the time of contracting,**  
 33            **between the amount charged for the property and the value**  
 34            **of that property measured by the price at which similar**  
 35            **property was readily obtainable in similar transactions.**

36        **A disparity between the contract price and the value of the**  
 37 **property measured by the price at which similar property was**  
 38 **readily obtainable in similar transactions does not, of itself, render**  
 39 **the contract unconscionable.**

40        **Sec. 13. A contract or duty governed by this article imposes an**  
 41 **obligation of good faith in its performance or enforcement.**

42        **Sec. 14. (a) The remedies provided by this article shall be**

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liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this article or by other rule of law.

(b) A right or an obligation declared by this article is enforceable by judicial proceeding.

Sec. 15. (a) From time to time, the dollar amount specified in section 18 of this chapter must change, as provided in subsections (b) and (c), according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers:

U.S. City Average, All Items 1967 = 100, compiled by the Bureau of Labor Statistics, United States Department of Labor, (the "index"). The index for December 1979, which was 230, is the reference base index.

(b) The dollar amount specified in section 18 of this chapter and any amount stated in the declaration under section 18 of this chapter must change on July 1 of each year if the percentage of change, calculated to the nearest whole percentage point, between the index at the end of the preceding year and the reference base index is ten percent (10%) or more, but:

(1) the part of the percentage change in the index in excess of a multiple of ten percent (10%) must be disregarded, and the dollar amount shall change only in multiples of ten percent (10%) of the amount appearing in this article on the date of enactment;

(2) the dollar amount must not change if the amount required by this section is that currently in effect under this article as a result of earlier application of this section; and

(3) the dollar amount may not be reduced below the amount appearing in this article on the date of enactment.

(c) If the index is revised after December 1979, the percentage of change under this section must be calculated on the basis of the revised index. If the revision of the index changes the reference base index, a revised reference base index must be determined by multiplying the reference base index then applicable by the rebasing factor furnished by the Bureau of Labor Statistics. If the index is superseded, the index referred to in this section is the index represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

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1        **Sec. 16.** Except as provided in sections 17 and 18 of this chapter,  
 2        this article applies to all common interest communities created  
 3        within Indiana after June 30, 2008. IC 32-25 does not apply to  
 4        common interest communities created after June 30, 2008.  
 5        Amendments to this article apply to all common interest  
 6        communities created after June 30, 2008, or subjected to this  
 7        article, regardless of when the amendment is adopted.

8        **Sec. 17.** If a cooperative:

- 9            (1) contains not more than twelve (12) units; and
- 10          (2) is not subject to development rights;

11        the cooperative is subject only to sections 6 and 7 of this chapter  
 12        unless the declaration provides that the entire article is applicable.

13        **Sec. 18. (a)** If a planned community that is not subject to a  
 14        development right:

- 15            (1) contains not more than twelve (12) units; or
- 16            (2) provides, in its declaration, that the annual average  
 17            common expense liability of all units restricted to residential  
 18            purposes, exclusive of optional user fees and any insurance  
 19            premiums paid by the association, may not exceed three  
 20            hundred dollars (\$300) as adjusted under section 15 of this  
 21            chapter;

22        it is subject only to sections 5, 6, and 7 of this chapter unless the  
 23        declaration provides that this entire article is applicable.

24        **(b)** The exemption provided in subsection (a)(2) applies only if:

- 25            (1) the declarant reasonably believes in good faith that the  
 26            maximum stated assessment will be sufficient to pay the  
 27            expenses of the planned community; and
- 28            (2) the declaration provides that the assessment may not be  
 29            increased during the period of declarant control without the  
 30            consent of all unit owners.

31        **Sec. 19.** Except as provided in section 20 of this chapter:

- 32            (1) sections 5, 6, and 7 of this chapter;
- 33            (2) IC 32-25.5-2-3;
- 34            (3) IC 32-25.5-2-4;
- 35            (4) IC 32-25.5-2-21;
- 36            (5) IC 32-25.5-3-2(a)(1) through IC 32-25.5-3-2(a)(6);
- 37            (6) IC 32-25.5-3-2(a)(11) through IC 32-25.5-3-2(a)(16);
- 38            (7) IC 32-25.5-3-11;
- 39            (8) IC 32-25.5-3-16;
- 40            (9) IC 32-25.5-3-18;
- 41            (10) IC 32-25.5-4-9;
- 42            (11) IC 32-25.5-4-17; and

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(12) section 3 of this chapter to the extent necessary in construing any of the sections listed in subdivisions (1) through (11);

apply to all common interest communities created in Indiana before July 1, 2008. However, those sections apply only with respect to events and circumstances occurring after June 30, 2008, and do not invalidate existing provisions of the declaration, bylaws, or plats or plans of those common interest communities.

Sec. 20. If a cooperative or planned community created in Indiana before July 1, 2008, contains not more than twelve (12) units and is not subject to any development rights, it is subject only to sections 5, 6, and 7 of this chapter unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of the provisions of section 21 of this chapter, in which case all the sections listed in section 19 of this chapter apply to that cooperative or planned community.

Sec. 21. (a) The declaration, bylaws, or plats and plans of a common interest community created before July 1, 2008, may be amended to achieve a result allowed by this article, regardless of what applicable law provided before this article was adopted.

(b) An amendment to the declaration, bylaws, or plats and plans authorized by this section must be adopted in conformity with procedures and requirements for amending the instruments specified by those instruments or, if there are none, in conformity with the amendment procedures of this article. If an amendment grants to a person rights, powers, or privileges permitted by this article, all correlative obligations, liabilities, and restrictions in this article also apply to the person.

Sec. 22. (a) As used in this section, "nonresidential common interest community" means a common interest community in which all units are restricted exclusively to nonresidential purposes. Except as provided in subsection (e), this section applies only to nonresidential common interest communities.

(b) A nonresidential common interest community is not subject to this article unless the declaration otherwise provides.

(c) The declaration of a nonresidential common interest community may provide that the entire article applies to the community or that only sections 5, 6, and 7 of this chapter apply.

(d) If the entire article applies to a nonresidential common interest community, the declaration may also require, subject to section 12 of this chapter, that:

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(1) notwithstanding IC 32-25.5-3-5, a management contract, an employment contract, a lease of recreational or parking areas or facilities, and any other contract or lease between the association and a declarant or an affiliate of a declarant continues in force after the declarant turns over control of the association; and

(2) notwithstanding section 4 of this chapter, purchasers of units must execute proxies, powers of attorney, or similar devices in favor of the declarant regarding particular matters enumerated in those instruments.

(e) A common interest community that contains units restricted exclusively to nonresidential purposes and other units that may be used for residential purposes is not subject to this article unless:

(1) the units that may be used for residential purposes would comprise a common interest community in the absence of the nonresidential units; or

(2) the declaration provides that this article applies as provided in subsection (c) or (d).

Sec. 23. This article does not apply to common interest communities or units located outside Indiana. However, the public offering statement provisions of this article apply to all contracts for the disposition thereof signed in Indiana by a party unless exempt under IC 32-25.5-4-1(b).

## **Chapter 2. Creation, Alteration, and Termination of Common Interest Communities**

Sec. 1. (a) A common interest community may be created under this article only by recording a declaration executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to that declaration to the association. The declaration must be recorded in every county in which a part of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of each person executing the declaration.

(b) In a condominium, a declaration, or an amendment to a declaration, adding units may not be recorded unless all structural components and mechanical systems of all buildings containing or comprising any units created are substantially completed in accordance with the plans, as evidenced by a recorded certificate of completion executed by an independent registered engineer, surveyor, or architect.

Sec. 2. Except as provided by the declaration:

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(1) if walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other parts of the walls, floors, or ceilings are a part of the common elements;

(2) if a chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any part thereof serving only the unit is a limited common element allocated solely to the unit, and any part thereof serving more than one

(1) unit or any part of the common elements is a part of the common elements;

(3) subject to subdivision (2), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit; and

(4) shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to the unit.

**Sec. 3. (a) All provisions of the declaration and bylaws are severable.**

**(b) The rule against perpetuities does not apply to defeat any provision of the declaration, bylaws, rules, or regulations adopted under IC 32-25.5-3-2(a)(1).**

**(c) If there is a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this article.**

**(d) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this article. Whether a substantial failure impairs marketability is not affected by this article.**

**Sec. 4. A description of a unit that sets forth the:**

**(1) name of the common interest community;**

**(2) recording data for the declaration;**

**(3) county in which the common interest community is located; and**

**(4) identifying number of the unit;**

**is a legally sufficient description of that unit and all rights, obligations, and interests appurtenant to that unit that were**

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created by the declaration or bylaws.

**Sec. 5. (a) The declaration must contain:**

(1) the names of the common interest community and the association and a statement that the common interest community is either a condominium, cooperative, or planned community;

(2) the name of every county in which any part of the common interest community is situated;

(3) a legally sufficient description of the real estate included in the common interest community;

(4) a statement of the maximum number of units that the declarant reserves the right to create;

(5) in a condominium or planned community, a description of the boundaries of each unit created by the declaration, including the unit's identifying number or, in a cooperative, a description, that may be by plats or plans, of each unit created by the declaration, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than one (1) unit;

(6) a description of limited common elements, other than those specified in section 2(2) and 2(4) of this chapter, as provided in section 9(b)(10) of this chapter and, in a planned community, any real estate that is or must become common elements;

(7) a description of real estate, except real estate subject to development rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in section 2(2) and 2(4) of this chapter, together with a statement that they may be allocated;

(8) a description of development rights and other special declarant rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of the rights must be exercised;

(9) if a development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with:

(A) either a statement fixing the boundaries of those parts and regulating the order in which those parts may be subjected to the exercise of each development right or a statement that assurances are not made in those regards;

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(B) a statement as to whether, if any development right is exercised in any part of the real estate subject to that development right, that development right must be exercised in all or in any other part of the remainder of that real estate;

(10) any other conditions or limitations under which the rights described in subdivision (8) may be exercised or will lapse;

(11) an allocation to each unit of the allocated interests in the manner described in section 7 of this chapter;

(12) restrictions:

(A) on alienation of the units, including restrictions on leasing that exceed the restrictions on leasing units that executive boards may impose under IC 32-25.5-3-2(c)(3); and

(B) on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest community, or on termination of the common interest community;

(13) the recording data for recorded easements and licenses appurtenant to or included in the common interest community or to which a part of the common interest community is or may become subject by virtue of a reservation in the declaration; and

(14) all matters required by sections 6, 7, 8, 9, 15, and 16 of this chapter and IC 32-25.5-3-3(d).

(b) The declaration may contain any other matters the declarant considers appropriate, including restrictions on the uses of a unit or the number or other qualifications of persons who may occupy units.

**Sec. 6. (a) A lease the expiration or termination of which may terminate the common interest community or reduce its size must be recorded. Every lessor of those leases in a condominium or planned community shall sign the declaration. The declaration must state:**

(1) the recording data for the lease;

(2) the date on which the lease is scheduled to expire;

(3) a legally sufficient description of the real estate subject to the lease;

(4) a right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a

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statement that they do not have those rights;

(5) a right of the unit owners to remove improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and  
(6) the rights of the unit owners to renew the lease and the conditions of a renewal, or a statement that they do not have those rights.

(b) After the declaration for a leasehold condominium or leasehold planned community is recorded, the lessor and the lessor's successor in interest may not terminate the leasehold interest of a unit owner who makes timely payment of a unit owner's share of the rent and otherwise complies with all covenants that, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest in a condominium or planned community is not affected by failure of any other person to pay rent or fulfill any other covenant.

(c) Acquisition of the leasehold interest of a unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(d) If the expiration or termination of a lease decreases the number of units in a common interest community, the allocated interests must be reallocated in accordance with IC 32-25.5-1-7(a) as if the units had been taken by eminent domain. Reallocations must be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

**Sec. 7. (a)** The declaration must allocate the following to each unit:

(1) In a condominium, a fraction or percentage of undivided interests in the common elements and in the common expenses of the association and a part of the votes in the association.

(2) In a cooperative, an ownership interest in the association, a fraction or percentage of the common expenses of the association, and a part of the votes in the association.

(3) In a planned community, a fraction or percentage of the common expenses of the association, and a part of the votes in the association.

(b) The declaration must state the formulas used to establish allocations of interests. The allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(c) If units may be added to or withdrawn from the common

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1 interest community, the declaration must state the formulas to be  
 2 used to reallocate the allocated interests among all units included  
 3 in the common interest community after the addition or  
 4 withdrawal.

5 (d) The declaration may provide:

6 (1) that different allocations of votes shall be made to the units  
 7 on particular matters specified in the declaration;

8 (2) for cumulative voting only for the purpose of electing  
 9 members of the executive board; and

10 (3) for class voting on specified issues affecting the class if  
 11 necessary to protect valid interests of the class. A declarant  
 12 may not use cumulative or class voting for the purpose of  
 13 evading a limitation imposed on declarants by this article and  
 14 units may not constitute a class because the units are owned  
 15 by a declarant.

16 (e) Except for minor variations due to rounding, the sum of the  
 17 common expense liabilities and, in a condominium, the sum of the  
 18 undivided interests in the common elements allocated at any time  
 19 to all the units must each equal one (1) if stated as a fraction or one  
 20 hundred percent (100%) if stated as a percentage. If there is a  
 21 discrepancy between an allocated interest and the result derived  
 22 from application of the pertinent formula, the allocated interest  
 23 prevails.

24 (f) In a condominium:

25 (1) the common elements are not subject to partition; and

26 (2) a purported conveyance, encumbrance, judicial sale, or  
 27 other voluntary or involuntary transfer of an undivided  
 28 interest in the common elements made without the unit to  
 29 which that interest is allocated is void.

30 (g) In a cooperative, any purported conveyance, encumbrance,  
 31 judicial sale, or other voluntary or involuntary transfer of an  
 32 ownership interest in the association made without the possessory  
 33 interest in the unit to which that interest is related is void.

34 Sec. 8. (a) Except for the limited common elements described in  
 35 section 2(2) and 2(4) of this chapter, the declaration must specify  
 36 to which unit or units each limited common element is allocated.  
 37 An allocation may not be altered without the consent of the unit  
 38 owners whose units are affected.

39 (b) Except as the declaration otherwise provides, a limited  
 40 common element may be reallocated by an amendment to the  
 41 declaration executed by the unit owners between or among whose  
 42 units the reallocation is made. The persons executing the

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1 amendment shall provide a copy of the amendment to the  
 2 association, which shall record it. The amendment must be  
 3 recorded in the names of the parties and the common interest  
 4 community.

5 (c) A common element not previously allocated as a limited  
 6 common element may be so allocated only under provisions in the  
 7 declaration made in accordance with section 5(a)(7) of this chapter.  
 8 The allocations must be made by amendments to the declaration.

9 Sec. 9. (a) Plats and plans are a part of the declaration and are  
 10 required for all common interest communities except cooperatives.  
 11 Separate plats and plans are not required by this article if all the  
 12 information required by this section is contained in either a plat or  
 13 plan. A plat and plan must be clear and legible and contain a  
 14 certification that the plat or plan contains all information required  
 15 by this section.

16 (b) Each plat must show or project the following:

17 (1) The name and a survey or general schematic map of the  
 18 entire common interest community.

19 (2) The location and dimensions of all real estate not subject  
 20 to development rights, or subject only to the development  
 21 right to withdraw, and the location and dimensions of all  
 22 existing improvements within the real estate.

23 (3) A legally sufficient description of real estate subject to  
 24 development rights, that labels the rights applicable to each  
 25 parcel.

26 (4) The extent of encroachments by or upon any part of the  
 27 common interest community.

28 (5) To the extent feasible, a legally sufficient description of all  
 29 easements serving or burdening a part of the common interest  
 30 community.

31 (6) Except as provided in subsection (h), the approximate  
 32 location and dimensions of any vertical unit boundaries not  
 33 shown or projected on plans recorded under subsection (d)  
 34 and the unit's identifying number.

35 (7) Except as provided in subsection (h), the approximate  
 36 location with reference to an established datum of a  
 37 horizontal unit boundaries not shown or projected on plans  
 38 recorded under subsection (d) and the unit's identifying  
 39 number.

40 (8) A legally sufficient description of real estate in which the  
 41 unit owners will own only an estate for years, labeled as  
 42 "leasehold real estate".

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(9) The distance between noncontiguous parcels of real estate comprising the common interest community.

(10) The approximate location and dimensions of porches, decks, balconies, garages, or patios allocated as limited common elements and a narrative description of any other limited common elements.

(11) In the case of real estate not subject to development rights, all other matters customarily shown on land surveys.

(c) A plat may also show the intended location and dimensions of a contemplated improvement to be constructed anywhere within the common interest community. A contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT".

(d) Except as provided in subsection (h), to the extent not shown or projected on the plats, plans of the units must show or project the following:

(1) The approximate location and dimensions of the vertical boundaries of each unit and that unit's identifying number.

(2) The approximate location of horizontal unit boundaries, with reference to an established datum, and that unit's identifying number.

(3) The approximate location of units in which the declarant has reserved the right to create additional units or common elements, identified appropriately.

(e) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside a building:

(1) have the same elevation as the horizontal boundaries of the inside part; and

(2) do not have to be depicted on the plats and plans.

(f) Upon exercising a development right, the declarant shall record:

(1) new plats and plans necessary to conform to the requirements of subsections (a), (b), and (d); or

(2) new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of those subsections.

(g) A certification of a plat or plan required by this section or section 1(b) of this chapter must be made by an independent surveyor, architect, or engineer.

(h) Plats and plans do not have to show the location and dimensions of the units' boundaries or their limited common elements if:

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(1) the plat shows the location and dimensions of all buildings containing or comprising the units; and

(2) the declaration includes other information that shows or contains a narrative description of the general layout of the units in those buildings and the limited common elements allocated to those units.

**Sec. 10. (a) To exercise a development right reserved under section 5(a)(8) of this chapter, the declarant must:**

(1) prepare, execute, and record an amendment to the declaration; and

(2) in a condominium or planned community, comply with section 9 of this chapter.

The declarant is the unit owner of any units created. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (b), reallocate the allocated interests among all units. The amendment must describe common elements and limited common elements created by the amendment and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by section 8 of this chapter.

(b) Development rights may be reserved within real estate added to the common interest community if:

(1) the amendment adding the real estate includes all matters required by section 5 or 6 of this chapter, as the case may be; and

(2) in a condominium or planned community, the plats and plans include all matters required by section 9 of this chapter.

This subsection does not extend the time limit on the exercise of development rights imposed by the declaration under section 5(a)(8) of this chapter.

(c) If a declarant exercises a development right to subdivide or convert a unit previously created into additional units or common elements, or both:

(1) if the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain; and

(2) if the declarant subdivides the unit into at least two (2) units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the

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units created by the subdivision in a reasonable manner prescribed by the declarant.

(d) If the declaration provides, under section 5(a)(8) of this chapter, that all or a part of the real estate is subject to a right of withdrawal:

(1) if all the real estate is subject to withdrawal, and the declaration does not describe separate parts of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and

(2) if any part is subject to withdrawal, it may not be withdrawn after a unit in that part has been conveyed to a purchaser.

Sec. 11. Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) may make any improvements or alterations to the owner's unit that do not impair the structural integrity or mechanical systems or lessen the support of any part of the common interest community;

(2) may not change the appearance of the common elements, or the exterior appearance of a unit or any other part of the common interest community, without permission of the association; and

(3) after acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of a part of the common interest community. The removal of partitions or creation of apertures under this subdivision is not an alteration of boundaries.

Sec. 12. (a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines, within thirty (30) days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved and states the reallocations. The amendment must:

(1) be executed by the unit owners;

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(2) contain words of conveyance between the unit owners; and  
 (3) on recordation, be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the association.

(b) Subject to the provisions of the declaration and other law, boundaries between units and common elements may be relocated to incorporate common elements within a unit by an amendment to the declaration upon application to the association by the owner of the unit who proposes to relocate a boundary. Unless the declaration provides otherwise, the amendment may be approved only if persons entitled to cast at least sixty-seven percent (67%) of the votes in the association, including sixty-seven percent (67%) of the votes allocated to units not owned by the declarant, agree to the action. The amendment may describe fees or charges payable by the owner of the affected unit in connection with the boundary relocation and the fees and charges are assets of the association. The amendment must:

- (1) be executed by the unit owner of the unit whose boundary is being relocated and by the association;
- (2) contain words of conveyance between the unit owner and the association; and
- (3) on recordation, be indexed in the name of the unit owner and the association as grantor or grantee, as appropriate.

(c) The association:

- (1) in a condominium or planned community shall prepare and record plats or plans necessary to show the altered boundaries of affected units, and their dimensions and identifying numbers; and
- (2) in a cooperative shall prepare and record amendments to the declaration, including any plans, necessary to show or describe the altered boundaries of affected units, and their dimensions and identifying numbers.

Sec. 13. (a) If the declaration expressly allows, a unit may be subdivided into two (2) or more units. Subject to the provisions of the declaration and other law, upon application of a unit owner to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration, including in a condominium or planned community the plats and plans, subdividing the unit.

(b) The amendment to the declaration must:

- (1) be executed by the owner of the unit to be subdivided;
- (2) assign an identifying number to each unit created; and
- (3) reallocate the allocated interests formerly allocated to the

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subdivided unit to the new units in a reasonable manner prescribed by the owner of the subdivided unit.

Sec. 14. (a) The existing physical boundaries of a unit or the physical boundaries of a unit reconstructed in substantial accordance with the description contained in the original declaration are its legal boundaries, rather than the boundaries derived from the description contained in the original declaration, regardless of vertical or lateral movement of the building or minor variance between those boundaries and the boundaries derived from the description contained in the original declaration.

(b) This section does not relieve a unit owner of liability in case of the owner's willful misconduct or relieve a declarant or any other person of liability for failure to adhere to plats and plans or, in a cooperative, to a representation in the public offering statement.

Sec. 15. (a) A declarant may maintain sales offices, management offices, and models in units or on common elements in the common interest community only if the declaration provides and specifies the rights of a declarant with regard to the number, size, location, and relocation thereof.

(b) In a cooperative or condominium, a sales office, management office, or model not designated a unit by the declaration is a common element. If a declarant ceases to be a unit owner, the declarant ceases to have any rights with regard to the unit unless it is removed promptly from the common interest community in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the common interest community.

(c) This section is subject to the provisions of other state law and to local ordinances.

Sec. 16. (a) Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging the declarant's obligations or exercising special declarant rights, whether arising under this article or reserved in the declaration.

(b) In a planned community, subject to IC 32-25.5-3-2(a)(6) and IC 32-25.5-3-12, the unit owners have an easement:

- (1) in the common elements for purposes of access to their units; and
- (2) to use the common elements and real estate that must become common elements for all other purposes.

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1        **Sec. 17. (a) Except in cases of amendments that may be executed**  
 2        **by a declarant under section 9(f) or 10 of this chapter, or by the**  
 3        **association under IC 32-25.5-1-7, or section 6(d), 8(c), 12(a), or 13**  
 4        **of this chapter or by certain unit owners under section 8(b), 12(a),**  
 5        **13(b), or 18(b) of this chapter, and except as limited by subsection**  
 6        **(d), the declaration, including plats and plans, may be amended**  
 7        **only by vote or agreement of unit owners of units to which at least**  
 8        **sixty-seven percent (67%) of the votes in the association are**  
 9        **allocated, or any larger majority the declaration specifies. The**  
 10       **declaration may specify a smaller number only if all of the units**  
 11       **are restricted exclusively to nonresidential use.**

12       **(b) An action to challenge the validity of an amendment adopted**  
 13       **by the association under this section may not be brought more than**  
 14       **one (1) year after the amendment is recorded.**

15       **(c) An amendment to the declaration must be recorded in every**  
 16       **county in which part of the common interest community is located**  
 17       **and is effective only upon recordation. An amendment, except an**  
 18       **amendment under section 12(a) of this chapter, must be indexed in**  
 19       **the grantee's index in the name of the common interest community**  
 20       **and the association and in the grantor's index in the name of the**  
 21       **parties executing the amendment.**

22       **(d) Except to the extent expressly allowed or required by other**  
 23       **provisions of this article, an amendment may not create or increase**  
 24       **special declarant rights, increase the number of units, change the**  
 25       **boundaries of a unit or the allocated interests of a unit, in the**  
 26       **absence of unanimous consent of the unit owners.**

27       **(e) Amendments to the declaration required by this article to be**  
 28       **recorded by the association must be prepared, executed, recorded,**  
 29       **and certified on behalf of the association by an officer of the**  
 30       **association designated for that purpose or, in the absence of**  
 31       **designation, by the president of the association.**

32       **(f) By vote or agreement of unit owners of units to which at least**  
 33       **eighty percent (80%) of the votes in the association are allocated,**  
 34       **or a larger percentage specified in the declaration, an amendment**  
 35       **to the declaration may prohibit or materially restrict the allowable**  
 36       **uses of or behavior in a unit or the number or other qualifications**  
 37       **of persons who may occupy units. The amendment must provide**  
 38       **reasonable protection for a use or occupancy permitted at the time**  
 39       **the amendment was adopted.**

40       **(g) The time limits specified in the declaration under section**  
 41       **5(a)(8) of this chapter within which reserved development rights**  
 42       **must be exercised may be extended, and additional development**

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rights may be created, if persons entitled to cast at least eighty percent (80%) of the votes in the association, including eighty percent (80%) of the votes allocated to units not owned by the declarant, agree to that action. The agreement is effective thirty (30) days after an amendment to the declaration reflecting the terms of the agreement is recorded unless all the persons holding the affected special declarant rights, or security interests in the rights:

- (1) record a written objection within the thirty (30) day period, in which case the amendment is void; or
- (2) consent in writing at the time the amendment is recorded, in which case the amendment is effective when recorded.

Sec. 18. (a) Except in the case of a taking of all the units by eminent domain or in the case of foreclosure against an entire cooperative of a security interest that has priority over the declaration, a common interest community may be terminated only by agreement of unit owners of units to which at least eighty percent (80%) of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses.

(b) An agreement to terminate must be evidenced by the execution of a termination agreement, or ratifications of a termination agreement, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications of the agreement:

- (1) must be recorded in every county in which a part of the common interest community is situated; and
- (2) are effective only upon recordation.

(c) In the case of a condominium or planned community containing only units having horizontal boundaries described in the declaration, a termination agreement:

- (1) may provide that all of the common elements and units of the common interest community must be sold following termination; and
- (2) if, under the agreement, real estate in the common interest community is to be sold following termination, must set forth the minimum terms of the sale.

(d) In the case of a condominium or planned community containing units not having horizontal boundaries described in the

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1 declaration, a termination agreement:

2 (1) may provide for sale of the common elements; and

3 (2) may not require that the units be sold following  
4 termination, unless the declaration as originally recorded  
5 provided otherwise or all the unit owners consent to the sale.

6 (e) The association, on behalf of the unit owners, may contract  
7 for the sale of real estate in a common interest community.  
8 However, the contract is not binding on the unit owners until  
9 approved under subsections (a) and (b). If real estate is to be sold  
10 following termination, title to the real estate, upon termination,  
11 vests in the association as trustee for the holders of all interests in  
12 the units. Thereafter, the association may effect the sale. Until the  
13 sale has been concluded and the proceeds of the sale distributed,  
14 the association continues in existence with all powers it had before  
15 termination. Proceeds of the sale must be distributed to unit  
16 owners and lienholders as their interests may appear, in  
17 accordance with subsections (h), (i), and (j). Unless otherwise  
18 specified in the termination agreement, as long as the association  
19 holds title to the real estate, a unit owner and the unit owner's  
20 successors in interest have an exclusive right to occupancy of the  
21 part of the real estate that formerly constituted the unit. During  
22 the period of occupancy, a unit owner and the unit owner's  
23 successors in interest remain liable for all assessments and other  
24 obligations imposed on unit owners by this article or the  
25 declaration.

26 (f) In a condominium or planned community, if the real estate  
27 constituting the common interest community is not to be sold  
28 following termination:

29 (1) title to the common elements; and

30 (2) in a common interest community containing only units  
31 having horizontal boundaries described in the declaration,  
32 title to all the real estate in the common interest community;  
33 vests in the unit owners upon termination as tenants in common in  
34 proportion to their respective interests as provided in subsection  
35 (j) and liens on the units shift accordingly. While the tenancy in  
36 common exists, a unit owner and the unit owner's successors in  
37 interest have an exclusive right to occupancy of the part of the real  
38 estate that formerly constituted the unit.

39 (g) Following termination of the common interest community,  
40 the proceeds of a sale of real estate, together with the assets of the  
41 association, are held by the association as trustee for unit owners  
42 and holders of liens on the units as their interests may appear.

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1       (h) Following termination of a condominium or planned  
2 community:

- 3           (1) creditors of the association holding liens on the units that  
4           were recorded or otherwise perfected before termination may  
5           enforce the liens in the same manner as a lienholder; and  
6           (2) all other creditors of the association are to be treated as if  
7           the creditors had perfected liens on the units immediately  
8           before termination.

9       (i) In a cooperative, the declaration may provide that all  
10       creditors of the association have priority over interests of unit  
11       owners and creditors of unit owners. In that event, following  
12       termination, creditors of the association holding liens on the  
13       cooperative that were recorded or otherwise perfected before  
14       termination may enforce their liens in the same manner as a  
15       lienholder, and any other creditor of the association is to be treated  
16       as if the creditor had perfected a lien against the cooperative  
17       immediately before termination. Unless the declaration provides  
18       that all creditors of the association have that priority:

- 19           (1) the lien of each creditor of the association that was  
20           perfected against the association before termination becomes,  
21           upon termination, a lien against each unit owner's interest in  
22           the unit as of the date the lien was perfected;  
23           (2) any other creditor of the association is to be treated upon  
24           termination as if the creditor had perfected a lien against each  
25           unit owner's interest immediately before termination;  
26           (3) the amount of the lien of an association's creditor  
27           described in subdivisions (1) and (2) against each of the unit  
28           owners' interest must be proportionate to the ratio that each  
29           unit's common expense liability bears to the common expense  
30           liability of all of the units;  
31           (4) the lien of a creditor of a unit owner that was perfected  
32           before termination continues as a lien against the unit owner's  
33           unit as of the date the lien was perfected; and  
34           (5) the assets of the association must be distributed to all unit  
35           owners and all lienholders as their interests may appear in the  
36           order described in this subsection. Creditors of the association  
37           are not entitled to payment from a unit owner in excess of the  
38           amount of the creditor's lien against the unit owner's interest.

39       (j) The respective interests of unit owners referred to in  
40       subsections (e), (f), (g), (h), and (i) are as follows:

- 41           (1) Except as provided in subdivision (2), the respective  
42           interests of unit owners are the fair market values of their

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units, allocated interests, and any limited common elements immediately before the termination, as determined by one (1) or more independent appraisers selected by the association. The decision of the independent appraisers must be distributed to the unit owners and becomes final unless disapproved within thirty (30) days after distribution by unit owners of units to which twenty-five percent (25%) of the votes in the association are allocated. The proportion of a unit owner's interest to that of all unit owners is determined by dividing the fair market value of the unit owner's unit and its allocated interests by the total fair market values of all the units and their allocated interests.

(2) If a unit or a limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are:

(A) in a condominium, their respective common element interests immediately before the termination;

(B) in a cooperative, their respective ownership interests immediately before the termination; and

(C) in a planned community, their respective common expense liabilities immediately before the termination.

(k) Except as provided in subsection (l), in a condominium or planned community, foreclosure or enforcement of a lien or encumbrance against the entire common interest community does not terminate, of itself, the common interest community, and foreclosure or enforcement of a lien or encumbrance against a part of the common interest community, other than withdrawable real estate, does not withdraw that part from the common interest community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate, or against common elements that have been subjected to a security interest by the association under IC 32-25.5-3-12, does not withdraw, of itself, the real estate from the common interest community. However, the person taking title to the real estate may require from the association, upon request, an amendment excluding the real estate from the common interest community.

(l) In a condominium or planned community, if a lien or encumbrance against a part of the real estate comprising the common interest community has priority over the declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure, may record

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an instrument excluding the real estate subject to the lien or encumbrance from the common interest community.

**Sec. 19. (a)** The declaration may require that all or a specified number or percentage of the lenders who hold security interests encumbering the units or who have extended credit to the association approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but a requirement for approval may not operate to:

- (1) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board;
- (2) prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding; or
- (3) prevent an insurance trustee or the association from receiving and distributing insurance proceeds except under IC 32-25.5-3-13.

**(b)** A lender who has extended credit to an association secured by an assignment of income or an encumbrance on the common elements may enforce its security agreement in accordance with its terms, subject to the requirements of this article and other law. Requirements that the association must:

- (1) deposit its periodic common charges before default with the lender to which the association's income has been assigned; or
- (2) increase its common charges at the lender's direction by amounts reasonably necessary to amortize the loan in accordance with its terms;

do not violate the prohibitions on lender approval contained in subsection (a).

**Sec. 20. (a)** If the declaration provides that any of the powers described in IC 32-25.5-3-2 are to be exercised by or may be delegated to a profit or nonprofit corporation or unincorporated association that exercises those or other powers on behalf of one (1) or more common interest communities or for the benefit of the unit owners of one (1) or more common interest communities, all provisions of this article applicable to unit owners' associations apply to the corporation or unincorporated association, except as otherwise provided in this section.

**(b)** Unless it is acting in the capacity of an association described in IC 32-25.5-3-1, a master association may exercise the powers set forth in IC 32-25.5-3-2(a)(2) only to the extent expressly allowed in

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the declarations of common interest communities that are part of the master association or expressly described in the delegations of power from those common interest communities to the master association.

(c) If the declaration of a common interest community provides that the executive board may delegate certain powers to a master association, the members of the executive board are not liable for the acts or omissions of the master association with respect to those powers following delegation.

(d) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in IC 32-25.5-3-3, IC 32-25.5-3-8, IC 32-25.5-3-9, IC 32-25.5-3-10, and IC 32-25.5-3-12 apply in the conduct of the affairs of a master association only to persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this article.

(e) If a master association is also an association described in IC 32-25.5-3-1, the certificate of incorporation or other instrument creating the master association and the declaration of each common interest community, the powers of that are assigned by the declaration or delegated to the master association, may provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:

(1) All unit owners of all common interest communities subject to the master association may elect all members of the master association's executive board.

(2) All members of the executive boards of all common interest communities subject to the master association may elect all members of the master association's executive board.

(3) All unit owners of each common interest community subject to the master association may elect specified members of the master association's executive board.

(4) All members of the executive board of each common interest community subject to the master association may elect specified members of the master association's executive board.

Sec. 21. (a) Two (2) or more common interest communities of the same form of ownership, by agreement of the unit owners as provided in subsection (b), may be merged or consolidated into a single common interest community. If a merger or consolidation occurs, unless the agreement otherwise provides:

(1) the resulting common interest community is the legal

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1 successor, for all purposes, of all of the preexisting common  
2 interest communities; and

3 (2) the operations and activities of all associations of the  
4 preexisting common interest communities are merged or  
5 consolidated into a single association that holds all powers,  
6 rights, obligations, assets, and liabilities of all preexisting  
7 associations.

8 (b) An agreement of two (2) or more common interest  
9 communities to merge or consolidate under subsection (a) must be:

10 (1) evidenced by an agreement prepared, executed, recorded,  
11 and certified by the president of the association of each of the  
12 preexisting common interest communities following approval  
13 by owners of units to which are allocated the percentage of  
14 votes in each common interest community required to  
15 terminate that common interest community; and

16 (2) recorded in every county in which a part of the common  
17 interest community is located and is not effective until  
18 recorded.

19 (c) Every merger or consolidation agreement must provide for  
20 the reallocation of the allocated interests in the new association  
21 among the units of the resultant common interest community  
22 either:

23 (1) by stating the reallocations or the formulas upon which  
24 they are based; or

25 (2) by stating the percentage of overall allocated interests of  
26 the new common interest community which are allocated to  
27 all of the units comprising each of the preexisting common  
28 interest communities, and providing that the part of the  
29 percentages allocated to each unit formerly comprising a part  
30 of the preexisting common interest community must be equal  
31 to the percentages of allocated interests allocated to that unit  
32 by the declaration of the preexisting common interest  
33 community.

34 Sec. 22. In a planned community, if the right is originally  
35 reserved in the declaration, the declarant in addition to any other  
36 development right may amend the declaration at any time during  
37 as many years as are specified in the declaration for adding  
38 additional real estate to the planned community without describing  
39 the location of that real estate in the original declaration. However:

40 (1) the amount of real estate added to the planned community  
41 under this section may not exceed ten percent (10%) of the  
42 real estate described in section 5(a)(3) of this chapter; and

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(2) the declarant may not increase the number of units in the planned community beyond the number stated in the original declaration under section 5(a)(5) of this chapter.

**Sec. 23. (a)** The declaration for a common interest community may state that it is a master planned community if:

(1) the declarant has reserved the development right to create at least five hundred (500) units that may be used for residential purposes; and

(2) at the time of the reservation the declarant owns or controls more than five hundred (500) acres on which the units may be built.

(b) If the requirements of subsection (a) are satisfied, the declaration for the master planned community:

(1) does not have to state a maximum number of units; and

(2) does not have to contain the information required by section 5(a)(3) through 5(a)(14) of this chapter;

until the declaration is amended under subsection (c).

(c) If each unit in a master planned community is conveyed to a purchaser, the declaration must contain:

(1) a sufficient legal description of the unit and all parts of the master planned community in which any other units have been conveyed to a purchaser; and

(2) all the information required by section 5(a)(3) through 5(a)(14) of this chapter with respect to the real estate.

(d) The only real estate in a master planned community that is subject to this article is a unit that has been declared or that is being offered for sale and any other real estate described under subsection (c). Other real estate that is or may become part of the master planned community is only subject to other law and to any other restrictions and limitations that appear of record.

(e) If the public offering statement conspicuously identifies the fact that the community is a master planned community, the disclosure requirements contained in IC 32-25.5-4 apply only with respect to units that have been declared or are being offered for sale in connection with the public offering statement and to the real estate described under subsection (c).

(f) Limitations in this article on the addition of unspecified real estate do not apply to a master planned community.

(g) The period of declarant control of the association for a master planned community terminates in accordance with any conditions specified in the declaration or otherwise at the time the declarant, in a recorded instrument and after giving written notice

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to all unit owners, voluntarily surrenders all rights to control the activities of the association.

### **Chapter 3. Management of the Common Interest Community**

**Sec. 1. A unit owners' association must be organized not later than the date the first unit in the common interest community is conveyed. The membership of the association at all times consists exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under IC 32-25.5-2-18 or their heirs, successors, or assigns. The association must be organized as a profit or nonprofit corporation, trust, or partnership or as an unincorporated association.**

**Sec. 2. (a) Except as provided in subsection (b), and subject to the provisions of the declaration, the association, even if unincorporated, may do the following:**

- (1) Adopt and amend bylaws, rules, and regulations.**
- (2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners.**
- (3) Hire and discharge managing agents and other employees, agents, and independent contractors.**
- (4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two (2) or more unit owners on matters affecting the common interest community.**
- (5) Make contracts and incur liabilities.**
- (6) Regulate the use, maintenance, repair, replacement, and modification of common elements.**
- (7) Cause additional improvements to be made as a part of the common elements.**
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, but:**
  - (A) common elements in a condominium or planned community may be conveyed or subjected to a security interest only under section 12 of this chapter; and**
  - (B) part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only under section 12 of this chapter.**
- (9) Grant easements, leases, licenses, and concessions through or over the common elements.**
- (10) Impose and receive payments, fees, or charges for the use, rental, or operation of the common elements, other than**

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limited common elements described in IC 32-25.5-2-2(2) and IC 32-25.5-2-2(4), and for services provided to unit owners.

(11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, rules, and regulations of the association.

(12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by IC 32-25.5-4-9, or statements of unpaid assessments.

(13) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance.

(14) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly provides.

(15) Exercise other powers conferred by the declaration or bylaws.

(16) Exercise all other powers that may be exercised in Indiana by legal entities of the same type as the association.

(17) Exercise other powers necessary and proper for the governance and operation of the association.

(18) By regulation, require that disputes between the executive board and unit owners or between at least two (2) unit owners regarding the common interest community must be submitted to nonbinding alternative dispute resolution in the manner described in the regulation as a prerequisite to commencement of a judicial proceeding.

(b) The declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

(c) Unless otherwise allowed by the declaration or this article, an association may adopt rules and regulations that affect the use of or behavior in units that may be used for residential purposes only to do the following:

(1) Prevent the use of a unit that violates the declaration.

(2) Regulate behavior in or occupancy of a unit that violates the declaration or adversely affects the use and enjoyment of other units or the common elements by other unit owners.

(3) Restrict the leasing of residential units to the extent the rules are reasonably designed to meet underwriting

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requirements of institutional lenders who regularly lend money secured by first mortgages on units in common interest communities or regularly purchase those mortgages.

Otherwise, the association may not regulate any use of or behavior in units.

(d) If a tenant of a unit owner violates the declaration, bylaws, or rules and regulations of the association, in addition to exercising any of its powers against the unit owner, the association may do the following:

(1) Exercise directly against the tenant the powers described in subsection (a)(11).

(2) After giving notice and an opportunity to be heard to the tenant and the unit owner, levy reasonable fines against the tenant for the violation.

(3) Enforce other rights against the tenant for the violation that the unit owner as landlord could lawfully have exercised under the lease or which the association could lawfully have exercised directly against the unit owner, or both.

(e) The rights granted under subsection (d)(3) may be exercised only if the tenant or unit owner fails to cure the violation within ten (10) days after the association notifies the tenant and unit owner of that violation.

(f) Unless a lease otherwise provides, this section does not:

(1) affect rights that the unit owner has to enforce the lease or that the association has under other law; or

(2) allow the association to enforce a lease to which it is not a party in the absence of a violation of the declaration, bylaws, or rules and regulations.

Sec. 3. (a) Except as provided in the declaration, the bylaws, subsection (b), or other provisions of this article, the executive board may act in all instances on behalf of the association. In the performance of any duties, officers and members of the executive board appointed by the declarant shall exercise the degree of care and loyalty required of a trustee. Officers and members of the executive board not appointed by the declarant shall exercise the degree of care and loyalty required of an officer or director of a nonprofit corporation organized under IC 23-7-1.1 (before its repeal August 1, 1991) or IC 23-17.

(b) The executive board may not act on behalf of the association to do the following:

(1) Amend the declaration.

(2) Terminate the common interest community.

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1 (3) Elect members of the executive board.

2 (4) Determine the qualifications, powers and duties, or terms  
3 of office of executive board members.

4 However, the executive board may fill vacancies in its membership  
5 for the unexpired part of a term.

6 (c) Within thirty (30) days after adoption of a proposed budget  
7 for the common interest community, the executive board shall:

8 (1) provide a summary of the budget to all the unit owners;  
9 and

10 (2) set a date for a meeting of the unit owners to consider  
11 ratification of the budget not less than fourteen (14) or more  
12 than thirty (30) days after mailing of the summary.

13 Unless at that meeting a majority of all unit owners or a larger vote  
14 specified in the declaration reject the budget, the budget is ratified,  
15 whether or not a quorum is present. If the proposed budget is  
16 rejected, the periodic budget last ratified by the unit owners must  
17 be continued until the unit owners ratify a subsequent budget  
18 proposed by the executive board.

19 (d) Subject to subsection (e), the declaration may provide for a  
20 period of declarant control of the association, during which a  
21 declarant, or persons designated by the declarant, may appoint and  
22 remove the officers and members of the executive board.  
23 Regardless of the period provided in the declaration, and except as  
24 provided in IC 32-25.5-2-23(g), a period of declarant control  
25 terminates not later than the earliest of:

26 (1) sixty (60) days after conveyance of seventy-five percent  
27 (75%) of the units that may be created to unit owners other  
28 than a declarant;

29 (2) two (2) years after all declarants have ceased to offer units  
30 for sale in the ordinary course of business;

31 (3) two (2) years after a right to add new units was last  
32 exercised; or

33 (4) the day the declarant, after giving written notice to unit  
34 owners, records an instrument voluntarily surrendering all  
35 rights to control activities of the association.

36 A declarant may voluntarily surrender the right to appoint and  
37 remove officers and members of the executive board before  
38 termination of that period, but in that event the declarant may  
39 require, for the duration of the period of declarant control, that  
40 specified actions of the association or executive board, as described  
41 in a recorded instrument executed by the declarant, be approved  
42 by the declarant before they become effective.

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1 (e) Not later than:

2 (1) sixty (60) days after conveyance of twenty-five percent  
3 (25%) of the units that may be created to unit owners other  
4 than a declarant, at least one (1) member and not less than  
5 twenty-five percent (25%) of the members of the executive  
6 board must be elected by unit owners other than the  
7 declarant; and

8 (2) sixty (60) days after conveyance of fifty percent (50%) of  
9 the units that may be created to unit owners other than a  
10 declarant, not less than thirty-three and one-third percent (33  
11 1/3%) of the members of the executive board must be elected  
12 by unit owners other than the declarant.

13 (f) Except as otherwise provided in IC 32-25.5-2-20(e), not later  
14 than the termination of a period of declarant control, the unit  
15 owners shall elect an executive board of at least three (3) members,  
16 at least a majority of whom must be unit owners. The executive  
17 board shall elect the officers. The executive board members and  
18 officers shall take office upon election.

19 (g) Notwithstanding a provision of the declaration or bylaws to  
20 the contrary, the unit owners, by a two-thirds (2/3) vote of all  
21 persons present and entitled to vote at a meeting of the unit owners  
22 at which a quorum is present, may remove a member of the  
23 executive board with or without cause, other than a member  
24 appointed by the declarant.

25 Sec. 4. (a) A special declarant right created or reserved under  
26 this article may be transferred only by an instrument evidencing  
27 the transfer recorded in every county in which any part of the  
28 common interest community is located. The instrument is not  
29 effective unless executed by the transferee.

30 (b) Upon transfer of any special declarant right, the liability of  
31 a transferor declarant is as follows:

32 (1) A transferor is not relieved of any obligation or liability  
33 arising before the transfer and remains liable for warranty  
34 obligations imposed upon the transferor by this article. Lack  
35 of privity does not deprive any unit owner of standing to  
36 maintain an action to enforce any obligation of the transferor.

37 (2) If a successor to any special declarant right is an affiliate  
38 of a declarant, the transferor is jointly and severally liable  
39 with the successor for any obligations or liabilities of the  
40 successor relating to the common interest community.

41 (3) If a transferor retains any special declarant rights, but  
42 transfers other special declarant rights to a successor who is

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not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this article or by the declaration relating to the retained special declarant rights and arising after the transfer.

(4) A transferor is not liable for an act or omission or a breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy or receivership proceedings, of any units owned by a declarant or real estate in a common interest community subject to development rights, a person acquiring title to all the property being foreclosed or sold, but only upon the person's request, succeeds to all special declarant rights related to the property held by the declarant, or only to any rights reserved in the declaration under IC 32-25.5-2-15 and held by that declarant to maintain models, sales offices, and signs. The judgment or instrument conveying title must provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy or receivership proceedings, of all interests in a common interest community owned by a declarant:

- (1) the declarant ceases to have any special declarant rights; and
- (2) the period of declarant control terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by the declarant to a successor declarant.

(e) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

- (1) A successor to a special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this article or by the declaration.
- (2) A successor to a special declarant right, other than a successor described in subdivision (3) or (4) or a successor who is an affiliate of a declarant, is subject to the obligations and liabilities imposed by this article or the declaration:

(A) on a declarant that relate to the successor's exercise or

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1 nonexercise of special declarant rights; or

2 (B) on the successor's transferor, other than:

3 (i) misrepresentations by a previous declarant;

4 (ii) warranty obligations on improvements made by a  
5 previous declarant, or made before the common interest  
6 community was created;

7 (iii) breach of a fiduciary obligation by a previous  
8 declarant or the previous declarant's appointees to the  
9 executive board; or

10 (iv) a liability or an obligation imposed on the transferor  
11 as a result of the transferor's acts or omissions after the  
12 transfer.

13 (3) A successor to only a right reserved in the declaration to  
14 maintain models, sales offices, and signs, may not exercise any  
15 other special declarant right, and is not subject to any liability  
16 or obligation as a declarant, except the obligation to provide  
17 a public offering statement and any liability arising as a result  
18 thereof.

19 (4) A successor to all special declarant rights held by a  
20 transferor who succeeded to those rights under a deed or  
21 other instrument of conveyance in lieu of foreclosure or a  
22 judgment or instrument conveying title under subsection (c)  
23 may declare in a recorded instrument the intention to hold  
24 those rights solely for transfer to another person. Thereafter,  
25 until transferring all special declarant rights to any person  
26 acquiring title to any unit or real estate subject to  
27 development rights owned by the successor, or until recording  
28 an instrument permitting exercise of all those rights, that  
29 successor may not exercise any of those rights other than any  
30 right held by the successor's transferor to control the  
31 executive board in accordance with section 3(d) of this  
32 chapter for the duration of any period of declarant control,  
33 and any attempted exercise of those rights is void. If a  
34 successor declarant may not exercise special declarant rights  
35 under this subsection, the successor declarant is not subject to  
36 any liability or obligation as a declarant other than liability  
37 for the declarant's acts and omissions under section 3(d) of  
38 this chapter.

39 (f) Nothing in this section subjects a successor to a special  
40 declarant right to a claim against or other obligations of a  
41 transferor declarant, other than claims and obligations arising  
42 under this article or the declaration.

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1       **Sec. 5. (a) Except as provided in IC 32-25.5-1-22, if entered into**  
 2       **before the executive board elected by the unit owners under section**  
 3       **3(f) of this chapter takes office:**

4               (1) **a management contract, an employment contract, or a**  
 5               **lease of recreational or parking areas or facilities;**

6               (2) **any other contract or lease between the association and a**  
 7               **declarant or an affiliate of a declarant; or**

8               (3) **a contract or lease that is not bona fide or was**  
 9               **unconscionable to the unit owners at the time entered into**  
 10              **under the circumstances then prevailing;**  
 11       **may be terminated without penalty by the association at any time**  
 12       **after the executive board elected by the unit owners under section**  
 13       **3(f) of this chapter takes office upon not less than ninety (90) days**  
 14       **notice to the other party.**

15       **(b) This section does not apply to:**

16               (1) **a lease the termination of which would terminate the**  
 17               **common interest community or reduce its size, unless the real**  
 18               **estate subject to that lease was included in the common**  
 19               **interest community for the purpose of avoiding the right of**  
 20               **the association to terminate a lease under this section; or**

21               (2) **a proprietary lease.**

22       **Sec. 6. (a) The bylaws of the association must provide the**  
 23       **following:**

24               (1) **The number of members of the executive board and the**  
 25               **titles of the officers of the association.**

26               (2) **Election by the executive board of a president, treasurer,**  
 27               **secretary, and other officers of the association the bylaws**  
 28               **specify.**

29               (3) **The qualifications, powers and duties, terms of office, and**  
 30               **manner of electing and removing executive board members**  
 31               **and offices and filling vacancies.**

32               (4) **Which, if any, of its powers the executive board or officers**  
 33               **may delegate to other persons or to a managing agent.**

34               (5) **Which of its officers may prepare, execute, certify, and**  
 35               **record amendments to the declaration on behalf of the**  
 36               **association.**

37               (6) **A method for amending the bylaws.**

38       **(b) Subject to the provisions of the declaration, the bylaws may**  
 39       **provide for other matters the association considers necessary and**  
 40       **appropriate.**

41       **Sec. 7. (a) Except to the extent provided by the declaration,**  
 42       **subsection (b), or section 13(h) of this chapter:**

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(1) the association is responsible for maintenance, repair, and replacement of the common elements; and

(2) a unit owner is responsible for maintenance, repair, and replacement of the owner's unit.

A unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through the owner's unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on a unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair.

(b) In addition to the liability that a declarant as a unit owner has under this article, the declarant alone is liable for all expenses in connection with real estate subject to development rights. Another unit owner and another part of the common interest community may not be subject to a claim for payment of the expenses. Unless the declaration provides otherwise, income or proceeds from real estate subject to development rights inures to the declarant.

(c) In a planned community, if all development rights have expired with respect to any real estate, the declarant remains liable for all expenses of that real estate unless, upon expiration, the declaration provides that the real estate becomes common elements or units.

**Sec. 8.** A meeting of the association must be held at least one (1) time each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than ten (10) or more than sixty (60) days before a meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of a meeting must state the following:

(1) The date, time, and place of the meeting.

(2) The items on the agenda, including the general nature of:

(A) a proposed amendment to the declaration or bylaws;

(B) any budget changes; and

(C) any proposal to remove an officer or member of the executive board.

**Sec. 9.** (a) Unless the bylaws provide otherwise, a quorum is present throughout a meeting of the association if persons entitled

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1 to cast twenty percent (20%) of the votes that may be cast for  
 2 election of the executive board are present in person or by proxy  
 3 at the beginning of the meeting.

4 (b) Unless the bylaws specify a larger percentage, a quorum is  
 5 considered present throughout a meeting of the executive board if  
 6 persons entitled to cast fifty percent (50%) of the votes on that  
 7 board are present at the beginning of the meeting.

8 Sec. 10. (a) If only one (1) of several owners of a unit is present  
 9 at a meeting of the association, the owner is entitled to cast all the  
 10 votes allocated to the unit. If more than one (1) of the owners is  
 11 present, the votes allocated to the unit may be cast only in  
 12 accordance with the agreement of a majority in interest of the  
 13 owners, unless the declaration expressly provides otherwise. There  
 14 is majority agreement if any one (1) of the owners casts the votes  
 15 allocated to the unit without protest being made promptly to the  
 16 person presiding over the meeting by any of the other owners of  
 17 the unit.

18 (b) Votes allocated to a unit may be cast by a proxy executed by  
 19 a unit owner. If a unit is owned by more than one (1) person, each  
 20 owner of the unit may vote or register protest to the casting of  
 21 votes by the other owners of the unit through an executed proxy.  
 22 A unit owner may revoke a proxy given under this section only by  
 23 actual notice of revocation to the person presiding over a meeting  
 24 of the association. A proxy is void if it is not dated or purports to  
 25 be revocable without notice. A proxy terminates one (1) year after  
 26 its date, unless it specifies a shorter term.

27 (c) If the declaration requires that votes on specified matters  
 28 affecting the common interest community be cast by lessees rather  
 29 than unit owners of leased units:

30 (1) subsections (a) and (b) apply to lessees as if they were unit  
 31 owners;

32 (2) unit owners who have leased their units to other persons  
 33 may not cast votes on those specified matters; and

34 (3) lessees are entitled to notice of meetings, access to records,  
 35 and other rights respecting those matters as if they were unit  
 36 owners. Unit owners must also be given notice, in the manner  
 37 provided in section 8 of this chapter, of all meetings at which  
 38 lessees are entitled to vote.

39 (d) Votes allocated to a unit owned by the association may not  
 40 be cast.

41 Sec. 11. (a) A unit owner is not liable, solely by reason of being  
 42 a unit owner, for an injury or damage arising out of the condition

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or use of the common elements. The association or a unit owner, except the declarant, is not liable for a declarant's torts in connection with a part of the common interest community that the declarant has the responsibility to maintain.

(b) An action alleging a wrong done by the association, including an action arising out of the condition or use of the common elements, may be maintained only against the association and not against any unit owner. If the wrong occurred during a period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to a unit owner for:

(1) all tort losses not covered by insurance suffered by the association or the unit owner; and

(2) all costs that the association would not have incurred but for a breach of contract or other wrongful act or omission.

If the declarant is liable to the association under this section, the declarant is also liable for all expenses of litigation, including reasonable attorney's fees, incurred by the association.

(c) Except as provided in IC 32-25.5-4-16(d) with respect to warranty claims, a statute of limitation affecting the association's right of action against a declarant under this article is tolled until the period of declarant control terminates. A unit owner is not precluded from maintaining an action contemplated by this section because the owner is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by section 17 of this chapter.

Sec. 12. (a) In a condominium or planned community, parts of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least eighty percent (80%) of the votes in the association (or a larger percentage the declaration specifies), including eighty percent (80%) of the votes allocated to units not owned by a declarant, or a larger percentage the declaration specifies, agree to that action. However, all owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association. However, the proceeds of the sale of limited common elements must be distributed equitably among the owners of units to which the limited common elements were allocated.

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(b) Part of a cooperative may be conveyed and all or part of a cooperative may be subjected to a security interest by the association if persons entitled to cast at least eighty percent (80%) of the votes in the association (or a larger percentage the declaration specifies), including eighty percent (80%) of the votes allocated to units not owned by a declarant (or a larger percentage the declaration specifies), agree to the action. However, if less than all of the units or limited common elements are to be conveyed or subjected to a security interest, all unit owners of those units, or the units to which those limited common elements are allocated, must agree in order to convey those units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association. A purported conveyance or other voluntary transfer of an entire cooperative, unless made under IC 32-25.5-2-18, is void.

(c) An agreement to convey common elements in a condominium or planned community, or to subject them to a security interest, or in a cooperative, an agreement to convey a part of a cooperative or subject it to a security interest, must be evidenced by the execution of an agreement, or ratifications of an agreement, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before the date. The agreement and all ratifications of the agreement must be recorded in every county in which a part of the common interest community is situated, and is effective upon recordation.

(d) The association, on behalf of the unit owners, may contract to convey an interest in a common interest community under subsection (a). However, the contract is not enforceable against the association until approved under subsections (a), (b), and (c). Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(e) Unless made under this section, a purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common elements or of any other part of a cooperative is void.

(f) A conveyance or encumbrance of common elements or of a cooperative under this section does not deprive any unit of its rights of access and support.

(g) Unless the declaration otherwise provides, if the holders of

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1 first security interests on eighty percent (80%) of the units that are  
 2 subject to security interests on the day the unit owners' agreement  
 3 under subsection (c) is recorded consent in writing:

4 (1) a conveyance of common elements under this section  
 5 terminates both the undivided interests in those common  
 6 elements allocated to the units and the security interests in  
 7 those undivided interests held by all persons holding security  
 8 interests in the units; and

9 (2) an encumbrance of common elements under this section  
 10 has priority over all preexisting encumbrances on the  
 11 undivided interests in those common elements held by all  
 12 persons holding security interests in the units.

13 (h) The consents by holders of first security interests on units  
 14 described in subsection (g), or a certificate of the secretary  
 15 affirming that those consents have been received by the association,  
 16 may be recorded at any time before the date on which the  
 17 agreement under subsection (c) becomes void. Consents or  
 18 certificates that are recorded are valid from the date they are  
 19 recorded for purposes of calculating the percentage of consenting  
 20 first security interest holders, regardless of later sales or  
 21 encumbrances on those units. Even if the required percentage of  
 22 first security interest holders consents, a conveyance or  
 23 encumbrance of common elements does not affect interests having  
 24 priority over the declaration, or created by the association after the  
 25 declaration was recorded.

26 (i) In a cooperative, the association may acquire, hold,  
 27 encumber, or convey a proprietary lease without complying with  
 28 this section.

29 Sec. 13. (a) Beginning not later than the date of the first  
 30 conveyance of a unit to a person other than a declarant, the  
 31 association shall maintain the following, to the extent reasonably  
 32 available:

33 (1) Property insurance on the common elements and, in a  
 34 planned community, also on property that must become  
 35 common elements, insuring against all risks of direct physical  
 36 loss commonly insured against or, in the case of a conversion  
 37 building, against fire and extended coverage perils. The total  
 38 amount of insurance after application of any deductibles must  
 39 be not less than eighty percent (80%) of the actual cash value  
 40 of the insured property at the time the insurance is purchased  
 41 and at each renewal date, exclusive of land, excavations,  
 42 foundations, and other items normally excluded from

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property policies.

(2) Liability insurance, including medical payment insurance, in an amount determined by the executive board but not less than an amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements and also, in cooperatives, of all units.

(b) If a building is part of a cooperative or contains units having horizontal boundaries described in the declaration, the insurance maintained under subsection (a)(1), to the extent reasonably available, must include the units, but does not have to include improvements and betterments installed by unit owners.

(c) If the insurance described in subsections (a) and (b) is not reasonably available, the association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it considers appropriate to protect the association or the unit owners.

(d) Insurance policies carried under subsections (a) and (b) must provide the following:

(1) A unit owner is an insured person under the policy with respect to liability arising out of the owner's interest in the common elements or membership in the association.

(2) The insurer waives its right to subrogation under the policy against a unit owner or member of the unit owner's household.

(3) An act or omission by a unit owner, unless acting within the scope of the owner's authority on behalf of the association, does not void the policy and is not a condition to recovery under the policy.

(4) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(e) A loss covered by the property policy under subsections (a)(1) and (b) must be adjusted with the association, but the insurance proceeds for the loss are payable to an insurance trustee designated for that purpose, or otherwise to the association, and not to a holder of a security interest. The insurance trustee or the association shall hold insurance proceeds in trust for the

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1 association, unit owners, and lienholders as their interests may  
 2 appear. Subject to subsection (h), the proceeds must be disbursed  
 3 first for the repair or restoration of the damaged property, and the  
 4 association, unit owners, and lienholders are not entitled to receive  
 5 payment of any part of the proceeds unless there is a surplus of  
 6 proceeds after the property has been completely repaired or  
 7 restored, or the common interest community is terminated.

8 (f) An insurance policy issued to the association does not prevent  
 9 a unit owner from obtaining insurance for the unit owner's own  
 10 benefit.

11 (g) An insurer that has issued an insurance policy under this  
 12 section shall issue certificates or memoranda of insurance to the  
 13 association and, upon written request, to any unit owner or holder  
 14 of a security interest. The insurer issuing the policy may not cancel  
 15 or refuse to renew it until thirty (30) days after notice of the  
 16 proposed cancellation or nonrenewal has been mailed to the  
 17 association, each unit owner, and each holder of a security interest  
 18 to whom a certificate or memorandum of insurance has been  
 19 issued at their respective last known addresses.

20 (h) A part of the common interest community for which  
 21 insurance is required under this section that is damaged or  
 22 destroyed must be repaired or replaced promptly by the  
 23 association unless the common interest community is terminated,  
 24 in which case IC 32-25.5-2-18 applies, repair or replacement would  
 25 be illegal under any state or local statute or ordinance governing  
 26 health or safety, or eighty percent (80%) of the unit owners,  
 27 including every owner of a unit or assigned limited common  
 28 element that will not be rebuilt, vote not to rebuild. The cost of  
 29 repair or replacement in excess of insurance proceeds and reserves  
 30 is a common expense. If the entire common interest community is  
 31 not repaired or replaced, the insurance proceeds attributable to the  
 32 damaged common elements must be used to restore the damaged  
 33 area to a condition compatible with the remainder of the common  
 34 interest community, and except to the extent that other persons will  
 35 be distributees, the insurance proceeds attributable to units and  
 36 limited common elements that are not rebuilt must be distributed  
 37 to the owners of those units and the owners of the units to which  
 38 those limited common elements were allocated, or to lienholders,  
 39 as their interests may appear, and the remainder of the proceeds  
 40 must be distributed to all the unit owners or lienholders, as their  
 41 interests may appear, as follows:

42 (1) In a condominium, in proportion to the common element

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interests of all the units.

(2) In a cooperative or planned community, in proportion to the common expense liabilities of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under IC 32-25.5-1-7(a), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations.

(i) The provisions of this section may be varied or waived in the case of a common interest community, all of whose units are restricted to nonresidential use.

Sec. 14. Unless otherwise provided in the declaration, surplus funds of the association remaining after payment of or provision for common expenses and prepayment of reserves must be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

Sec. 15. (a) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association.

(b) Except for assessments under subsections (c), (d), and (e), all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration under IC 32-25.5-2-7(a) and IC 32-25.5-2-7(b). A past due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding eighteen percent (18%) per year.

(c) To the extent required by the declaration:

(1) a common expense associated with the maintenance, repair, or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

(2) a common expense or part thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; and

(3) the costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

(d) Assessments to pay a judgment against the association may

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1 be made only against the units in the common interest community  
 2 at the time the judgment was entered, in proportion to their  
 3 common expense liabilities.

4 (e) If a common expense is caused by the misconduct of a unit  
 5 owner, the association may assess that expense exclusively against  
 6 the owner's unit.

7 (f) If common expense liabilities are reallocated, common  
 8 expense assessments and an installment thereof not yet due must  
 9 be recalculated in accordance with the reallocated common  
 10 expense liabilities.

11 Sec. 16. (a) The association has a statutory lien on a unit for any  
 12 assessment levied against that unit or fines imposed against its unit  
 13 owner. Unless the declaration otherwise provides, fees, charges,  
 14 late charges, fines, and interest charged under section 2(a)(10),  
 15 2(a)(11), and 2(a)(12) of this chapter are enforceable as  
 16 assessments under this section. If an assessment is payable in  
 17 installments, the lien is for the full amount of the assessment from  
 18 the time the first installment thereof becomes due.

19 (b) A lien under this section is prior to all other liens and  
 20 encumbrances on a unit except:

21 (1) liens and encumbrances recorded before the recordation  
 22 of the declaration and, in a cooperative, liens and  
 23 encumbrances that the association creates, assumes, or takes  
 24 subject to;

25 (2) a first security interest on the unit recorded before the  
 26 date on which the assessment sought to be enforced became  
 27 delinquent, or, in a cooperative, the first security interest  
 28 encumbering only the unit owner's interest and perfected  
 29 before the date on which the assessment sought to be enforced  
 30 became delinquent; and

31 (3) liens for real estate taxes and other governmental  
 32 assessments or charges against the unit or cooperative.

33 The lien is also prior to all security interests described in  
 34 subdivision (2) to the extent of the common expense assessments  
 35 based on the periodic budget adopted by the association under  
 36 section 15(a) of this chapter that would have become due in the  
 37 absence of acceleration during the six (6) months immediately  
 38 preceding institution of an action to enforce the lien. This  
 39 subsection does not affect the priority of mechanic's liens, or the  
 40 priority of liens for other assessments made by the association.

41 (c) Unless the declaration otherwise provides, if at least two (2)  
 42 associations have liens for assessments created at any time on the

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1 same property, those liens have equal priority.

2 (d) Recording of the declaration constitutes record notice and  
3 perfection of the lien. Any other recordation of a claim of lien for  
4 assessment under this section is not required.

5 (e) A lien for unpaid assessments is extinguished unless  
6 proceedings to enforce the lien are instituted within three (3) years  
7 after the full amount of the assessments becomes due.

8 (f) This section does not prohibit actions to recover sums for  
9 which subsection (a) creates a lien or prohibit an association from  
10 taking a deed in lieu of foreclosure.

11 (g) A judgment or decree in an action brought under this section  
12 must include costs and reasonable attorney's fees for the prevailing  
13 party.

14 (h) The association, upon written request, shall furnish to a unit  
15 owner a statement setting forth the amount of unpaid assessments  
16 against the unit. If the unit owner's interest is real estate, the  
17 statement must be in recordable form. The statement must be  
18 furnished within ten (10) business days after receipt of the request  
19 and is binding on the association, the executive board, and every  
20 unit owner.

21 (i) In a cooperative, upon nonpayment of an assessment on a  
22 unit, the unit owner may be evicted in the same manner as  
23 provided by law in the case of an unlawful holdover by a  
24 commercial tenant, and the lien may be foreclosed as provided by  
25 this section.

26 (j) The association's lien may be foreclosed as follows:

27 (1) In a condominium or planned community, the  
28 association's lien must be foreclosed in like manner as a  
29 mortgage on real estate.

30 (2) In a cooperative whose unit owners' interests in the units  
31 are real estate as provided in IC 32-25.5-1-5, the association's  
32 lien must be foreclosed in like manner as a mortgage on real  
33 estate.

34 (3) In a cooperative whose unit owners' interests in the units  
35 are personal property, the association's lien must be  
36 foreclosed in like manner as a security interest under the  
37 Uniform Commercial Code (IC 26-1).

38 (k) The following apply in a cooperative if the unit owner's  
39 interest in a unit is real estate:

40 (1) The association, upon nonpayment of assessments and  
41 compliance with this subsection, may sell that unit at a public  
42 sale or by private negotiation, and at any time and place.

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Every aspect of the sale, including the method, advertising, time, place, and terms must be reasonable. The association shall give to the unit owner and any lessees of the unit owner reasonable written notice of the date, time, and place of any public sale or, if a private sale is intended, of the intention of entering into a contract to sell and of the time after which a private disposition may be made. The same notice must also be sent to any other person who has a recorded interest in the unit that would be cut off by the sale, but only if the recorded interest was on record seven (7) weeks before the date specified in the notice as the date of any public sale or seven (7) weeks before the date specified in the notice as the date after which a private sale may be made. The notices required by this subsection may be sent to any address reasonable in the circumstances. Sale may not be held until five (5) weeks after the sending of the notice. The association may buy at any public sale and, if the sale is conducted by a fiduciary or other person not related to the association, at a private sale.

(2) Unless otherwise agreed, the debtor is liable for any deficiency in a foreclosure sale.

(3) The proceeds of a foreclosure sale must be applied in the following order:

(A) The reasonable expenses of sale.

(B) The reasonable expenses of securing possession before sale; holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by agreement between the association and the unit owner, reasonable attorney's fees and other legal expenses incurred by the association.

(C) Satisfaction of the association's lien.

(D) Satisfaction in the order of priority of any subordinate claim of record.

(E) Remittance of any excess to the unit owner.

(4) A good faith purchaser for value acquires the unit free of the association's debt that gave rise to the lien under which the foreclosure sale occurred and any subordinate interest, even if the association or other person conducting the sale failed to comply with the requirements of this section. The person conducting the sale shall execute a conveyance to the purchaser sufficient to convey the unit and stating that it is executed by the person after a foreclosure of the association's

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lien by power of sale and that the person was empowered to make the sale. Signature and title or authority of the person signing the conveyance as grantor and a recital of the facts of nonpayment of the assessment and of the giving of the notices required by this subsection are sufficient proof of the facts recited and of the person's authority to sign. Additional proof of authority is not required even if the association is named as grantee in the conveyance.

(5) Before the association has disposed of a unit in a cooperative or entered into a contract for its disposition under the power of sale, the unit owners or the holder of a subordinate security interest may cure the unit owner's default and prevent sale or other disposition by tendering the performance due under the security agreement, including any amounts due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorney's fees of the creditor.

(l) In an action by an association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver to collect all sums alleged to be due and owing to a unit owner before commencement or during pendency of the action. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association under section 15(a) of this chapter.

Sec. 17. (a) The following apply in a condominium or planned community:

(1) Except as provided in subdivision (2), a judgment for money against the association if recorded or otherwise perfected, is not a lien on the common elements, but is a lien in favor of the judgment lienholder against all of the units in the common interest community at the time the judgment was entered. Other property of a unit owner is not subject to the claims of creditors of the association.

(2) If the association has granted a security interest in the common elements to a creditor of the association under section 12 of this chapter, the holder of that security interest must exercise its right against the common elements before its judgment lien on any unit may be enforced.

(3) Whether perfected before or after the creation of the

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common interest community, if a lien, other than a deed of trust or mortgage (including a judgment lien or lien attributable to work performed or materials supplied before creation of the common interest community), becomes effective against two (2) or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to the owner's unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any part of the common expenses incurred in connection with that lien.

(4) A judgment against the association must be indexed in the name of the common interest community and the association and, when indexed, is notice of the lien against the units.

(b) The following apply to a cooperative:

(1) If the association receives notice of an impending foreclosure on all or any part of the association's real estate, the association shall promptly transmit a copy of that notice to each unit owner of a unit located within the real estate to be foreclosed. Failure of the association to transmit the notice does not affect the validity of the foreclosure.

(2) Whether or not a unit owner's unit is subject to the claims of the association's creditors, other property of a unit owner is not subject to those claims.

**Sec. 18.** The association shall keep financial records sufficiently detailed to enable the association to comply with IC 32-25.5-4-9. Financial and other records must be made reasonably available for examination by any unit owner and the owner's authorized agents.

**Sec. 19.** With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person:

(1) is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers;

(2) without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise; and

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(3) is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

#### **Chapter 4. Protection of Purchasers**

**Sec. 1. (a)** This chapter applies to all units subject to this article, except as provided in subsection (b) or as modified or waived by agreement of purchasers of units in a common interest community in which all units are restricted to nonresidential use.

**(b)** A public offering statement or resale certificate does not have to be prepared or delivered in the case of a:

- (1)** gratuitous disposition of a unit;
- (2)** disposition under court order;
- (3)** disposition by a government or governmental agency;
- (4)** disposition by foreclosure or deed in lieu of foreclosure;
- (5)** disposition to a dealer;
- (6)** disposition that may be canceled at any time and for any reason by the purchaser without penalty; or
- (7)** disposition of a unit restricted to nonresidential purposes.

**Sec. 2. (a)** Except as provided in subsection (b), a declarant, before offering an interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of sections 3, 4, 5, and 6 of this chapter.

**(b)** A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant or to a dealer who intends to offer units in the common interest community. If a transfer occurs, the transferor shall provide the transferee with information necessary to enable the transferee to fulfill the requirements of subsection (a).

**(c)** A declarant or dealer who offers a unit to a purchaser shall deliver a public offering statement in the manner prescribed in section 8(a) of this chapter. The person who prepared all or a part of the public offering statement is liable under sections 8 and 17 of this chapter for a false or misleading statement set forth in the public offering or for an omission of a material fact therefrom with respect to that part of the public offering statement that the person prepared. If a declarant did not prepare any part of a public offering statement that the declarant delivers, the declarant is not liable for false or misleading statement set forth in the public offering or for an omission of a material fact from the public offering unless the declarant had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

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(d) If a unit is part of:

(1) a common interest community; and

(2) another real estate regime in connection with the sale of which the delivery of a public offering statement is required under Indiana law;

a single public offering statement conforming to the requirements of sections 3, 4, 5, and 6 of this chapter as those requirements relate to each regime in which the unit is located, and to any other requirements imposed under Indiana law, may be prepared and delivered instead of providing two (2) or more public offering statements.

**Sec. 3. (a)** Except as provided in subsection (b), a public offering statement must contain or fully and accurately disclose the following:

(1) The name and principal address of the declarant and of the common interest community, and a statement that the common interest community is a condominium, cooperative, or planned community.

(2) A general description of the common interest community, including, to the extent possible, the types, number, and declarant's schedule of commencement and completion of construction of buildings, and amenities that the declarant anticipates including in the common interest community.

(3) The number of units in the common interest community.

(4) Copies and a brief narrative description of the significant features of the declaration, other than any plats and plans, and any other recorded covenants, conditions, restrictions, and reservations affecting the common interest community, the bylaws, and any rules or regulations of the association, copies of any contracts and leases to be signed by purchasers at closing, and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under IC 32-25.5-3-5.

(5) A current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one (1) year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget must include the following:

(A) A statement of the amount, or a statement that there is

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- 1 no amount, included in the budget as a reserve for repairs
- 2 and replacement.
- 3 (B) A statement of any other reserves.
- 4 (C) The projected common expense assessment by category
- 5 of expenditures for the association.
- 6 (D) The projected monthly common expense assessment
- 7 for each type of unit.
- 8 (6) Services not reflected in the budget that the declarant
- 9 provides, or expenses that the declarant pays and which the
- 10 declarant expects may become at any subsequent time a
- 11 common expense of the association and the projected common
- 12 expense assessment attributable to each of those services or
- 13 expenses for the association and for each type of unit.
- 14 (7) An initial or a special fee due from the purchaser at
- 15 closing, together with a description of the purpose and method
- 16 of calculating the fee.
- 17 (8) A description of liens, defects, or encumbrances on or
- 18 affecting the title to the common interest community.
- 19 (9) A description of financing offered or arranged by the
- 20 declarant.
- 21 (10) The terms and significant limitations of warranties
- 22 provided by the declarant, including statutory warranties and
- 23 limitations on the enforcement thereof or on damages.
- 24 (11) A statement that:
- 25 (A) within fifteen (15) days after receipt of a public
- 26 offering statement a purchaser, before conveyance, may
- 27 cancel any contract for purchase of a unit from a
- 28 declarant;
- 29 (B) if a declarant fails to provide a public offering
- 30 statement to a purchaser before conveying a unit, the
- 31 purchaser may recover from the declarant ten percent
- 32 (10%) of the sales price of the unit plus ten percent (10%)
- 33 of the share, proportionate to the purchaser's common
- 34 expense liability, of any indebtedness of the association
- 35 secured by security interests encumbering the common
- 36 interest community; and
- 37 (C) if a purchaser receives the public offering statement
- 38 more than fifteen (15) days before signing a contract, the
- 39 purchaser cannot cancel the contract.
- 40 (12) A statement of unsatisfied judgments or pending suits
- 41 against the association, and the status of pending suits
- 42 material to the common interest community of which a

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1 declarant has actual knowledge.

2 (13) A statement that a deposit made in connection with the  
3 purchase of a unit will be held in an escrow account until  
4 closing and will be returned to the purchaser if the purchaser  
5 cancels the contract under section 8 of this chapter, together  
6 with the name and address of the escrow agent.

7 (14) Restraints on alienation of any part of the common  
8 interest community and any restrictions:

9 (A) on use, occupancy, and alienation of the units; and

10 (B) on the amount for which a unit may be sold or on the  
11 amount that may be received by a unit owner on sale,  
12 condemnation, or casualty loss to the unit or to the  
13 common interest community, or on termination of the  
14 common interest community.

15 (15) A description of the insurance coverage provided for the  
16 benefit of unit owners.

17 (16) Current or expected fees or charges to be paid by unit  
18 owners for the use of the common elements and other facilities  
19 related to the common interest community.

20 (17) The extent to which financial arrangements have been  
21 provided for completion of all improvements that the  
22 declarant is obligated to build under section 19 of this  
23 chapter.

24 (18) A brief narrative description of zoning and other land use  
25 requirements affecting the common interest community.

26 (19) Unusual and material circumstances, features, and  
27 characteristics of the common interest community and the  
28 units.

29 (20) In a cooperative:

30 (A) whether the unit owners will be entitled, for federal,  
31 state, and local income tax purposes, to a pass-through of  
32 deductions for payments made by the association for real  
33 estate taxes and interest paid the holder of a security  
34 interest encumbering the cooperative; and

35 (B) a statement as to the effect on every unit owner if the  
36 association fails to pay real estate taxes or payments due  
37 the holder of a security interest encumbering the  
38 cooperative.

39 (b) If a common interest community composed of not more than  
40 twelve (12) units is not subject to any development rights and no  
41 power is reserved to a declarant to make the common interest  
42 community part of a larger common interest community, group of

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common interest communities, or other real estate, a public offering statement may but need not include the information otherwise required by subsection (a)(9), (a)(10), (a)(15), (a)(16), (a)(17), (a)(18), and (a)(19) and the narrative descriptions of documents required by subsection (a)(4).

(c) A declarant promptly shall amend the public offering statement to report any material change in the information required by this section.

Sec. 4. If the declaration provides that a common interest community is subject to development rights, the public offering statement must disclose the following, in addition to the information required by section 3 of this chapter:

(1) The maximum number of units, and the maximum number of units per acre, that may be created.

(2) A statement of how many or what percentage of the units that may be created will be restricted exclusively to residential use, or a statement that no representations are made regarding use restrictions.

(3) If any of the units that may be built within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the real estate areas, and the maximum percentage of the floor areas of all units that may be created therein, that are not restricted exclusively to residential use.

(4) A brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights.

(5) A statement of the maximum extent to which each unit's allocated interests may be changed by the exercise of any development right described in subdivision (3).

(6) A statement of the extent to which any buildings or other improvements that may be erected under any development right in any part of the common interest community will be compatible with existing buildings and improvements in the common interest community in terms of architectural style, quality of construction, and size, or a statement that no assurances are made in those regards.

(7) General descriptions of all other improvements that may be made and limited common elements that may be created within any part of the common interest community under any development right reserved by the declarant, or a statement

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that assurances are not made in that regard.

(8) A statement of limitations concerning the location of a building or other improvement that may be made within any part of the common interest community under a development right reserved by the declarant, or a statement that assurances are not made in that regard.

(9) A statement that limited common elements created under a development right reserved by the declarant will be of the same general types and sizes as the limited common elements within other parts of the common interest community, or a statement of the types and sizes planned, or a statement that assurances are not made in that regard.

(10) A statement that the proportion of limited common elements to units created under a development right reserved by the declarant will be approximately equal to the proportion existing within other parts of the common interest community, or a statement of any other assurances in that regard, or a statement that assurances are not made in that regard.

(11) A statement that all restrictions in the declaration affecting use, occupancy, and alienation of units will apply to any units created under any development right reserved by the declarant, or a statement of any differentiations that may be made as to those units, or a statement that assurances are not made in that regard.

(12) A statement of the extent to which any assurances made under this section apply or do not apply if a development right is not exercised by the declarant.

**Sec. 5.** If the declaration provides that ownership or occupancy of a unit is or may be in time shares, the public offering statement shall disclose the following, in addition to the information required by section 3 of this chapter:

(1) The number and identity of units in which time shares may be created.

(2) The total number of time shares that may be created.

(3) The minimum duration of any time shares that may be created.

(4) The extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in IC 32-25.5-3-16.

**Sec. 6. (a)** The public offering statement of a common interest community containing a conversion building must contain the

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following, in addition to the information required by section 3 of this chapter:

(1) A statement by the declarant, based on a report prepared by an independent registered architect or engineer, describing the present condition of structural components and mechanical and electrical installations material to the use and enjoyment of the building.

(2) A statement by the declarant of the expected useful life of each item reported on in subdivision (1) or a statement that representations are not made in that regard.

(3) A list of outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations.

(b) This section applies only to buildings containing units that may be occupied for residential use.

Sec. 7. If an interest in a common interest community is currently registered with the federal Securities and Exchange Commission, a declarant satisfies all requirements relating to the preparation of a public offering statement of this article if the declarant delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission.

Sec. 8. (a) A person required to deliver a public offering statement under section 2(c) of this chapter shall provide a purchaser with a copy of the public offering statement and all amendments to the statement:

(1) before conveyance of the unit; and

(2) not later than the date of any contract of sale.

Unless a purchaser is given the public offering statement more than fifteen (15) days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within fifteen (15) days after first receiving the public offering statement.

(b) If a purchaser elects to cancel a contract under subsection (a), the purchaser may do so by:

(1) hand delivering notice of the cancellation to the offeror; or

(2) mailing notice of the cancellation by prepaid United States mail to the offeror or to the offeror's agent for service of process.

A cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly.

(c) If a person required to deliver a public offering statement under section 2(c) of this chapter fails to provide a purchaser to

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whom a unit is conveyed with that public offering statement and all amendments to the statement as required by subsection (a), the purchaser, in addition to any rights to damages or other relief, is entitled to receive from the person an amount equal to ten percent (10%) of the sale price of the unit, plus ten percent (10%) of the share, proportionate to the purchaser's common expense liability, of any indebtedness of the association secured by security interests encumbering the common interest community.

Sec. 9. (a) Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under section 1(b) of this chapter, a unit owner shall furnish to a purchaser, before the earlier of conveyance or transfer of the right to possession of a unit, a copy of the declaration (other than any plats and plans), the bylaws, the rules or regulations of the association, and a certificate that contains the following:

- (1) A statement disclosing the effect on the proposed disposition of a right of first refusal or other restraint on the free alienability of the unit held by the association.
- (2) A statement setting forth the amount of the periodic common expense assessment and unpaid common expense or special assessment currently due and payable from the selling unit owner.
- (3) A statement of other fees payable by the owner of the unit being sold.
- (4) A statement of capital expenditures approved by the association for the current and succeeding fiscal years.
- (5) A statement of the amount of reserves for capital expenditures and of parts of those reserves designated by the association for specified projects.
- (6) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association.
- (7) The current operating budget of the association.
- (8) A statement of unsatisfied judgments against the association and the status of pending suits in which the association is a defendant.
- (9) A statement describing insurance coverage provided for the benefit of unit owners.
- (10) A statement as to whether the executive board has given or received written notice that existing uses, occupancies, alterations, or improvements in or to the unit or to the limited common elements assigned thereto violate a provision of the declaration.

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(11) A statement as to whether the executive board has received written notice from a governmental agency of a violation of environmental, health, or building codes with respect to the unit, the limited common elements assigned thereto, or any other part of the common interest community that has not been cured.

(12) A statement of the remaining term of a leasehold estate affecting the common interest community and the provisions governing an extension or renewal thereof.

(13) A statement of restrictions in the declaration affecting the amount that may be received by a unit owner upon sale, condemnation, casualty loss to the unit or the common interest community, or termination of the common interest community.

(14) In a cooperative, an accountant's statement, if any was prepared, as to the deductibility for federal income tax purposes by the unit owner of real estate taxes and interest paid by the association.

(15) A statement describing a pending sale or encumbrance of common elements.

(16) A statement disclosing the effect on the unit to be conveyed of restrictions on the owner's right to use or occupy the unit or to lease the unit to another person.

(b) The association, within ten (10) days after a request by a unit owner, shall furnish a certificate containing the information necessary to enable the unit owner to comply with this section. A unit owner providing a certificate under subsection (a) is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

(c) A purchaser is not liable for an unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner. However, the purchase contract is voidable by the purchaser until the certificate has been provided and for five (5) days thereafter or until conveyance, whichever occurs first.

**Sec. 10.** A deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement under section 2(c) of this chapter must be placed in escrow and held either in Indiana or in the state where the unit is located in an account designated solely for that purpose by an institution whose accounts are insured by a governmental agency

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or instrumentality until:

- (1) delivered to the declarant at closing;
- (2) delivered to the declarant because of the purchaser's default under a contract to purchase the unit; or
- (3) refunded to the purchaser.

Sec. 11. (a) In the case of a sale of a unit where delivery of a public offering statement is required under section 2(c) of this chapter, a seller:

(1) before conveying a unit, shall record or furnish to the purchaser releases of all liens, except liens on real estate that a declarant has the right to withdraw from the common interest community, that the purchaser does not expressly agree to take subject to or assume and that encumber:

(A) in a condominium, that unit and its common element interest; and

(B) in a cooperative or planned community, that unit and any limited common elements assigned thereto; or

(2) shall provide a surety bond or substitute collateral for or insurance against the lien as provided for liens on real estate.

(b) Before conveying real estate to the association, the declarant shall have that real estate released from:

(1) all liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units; and

(2) all other liens on that real estate unless the public offering statement describes certain real estate that may be conveyed subject to liens in specified amounts.

Sec. 12. (a) A declarant of a common interest community containing conversion buildings, and a dealer who intends to offer units in the common interest community, shall give each of the residential tenants and a residential subtenant in possession of a part of a conversion building notice of the conversion and provide the persons with the public offering statement not later than one hundred twenty (120) days before the tenants and a subtenant in possession are required to vacate. The notice:

(1) must set forth the rights of tenants and subtenants under this section; and

(2) must be:

(A) hand delivered to the unit; or

(B) mailed by prepaid United States mail to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant.

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1 A tenant or subtenant may not be required to vacate upon less than  
 2 one hundred twenty (120) days notice, except by reason of  
 3 nonpayment of rent, waste, or conduct that disturbs other tenants'  
 4 peaceful enjoyment of the premises, and the terms of the tenancy  
 5 may not be altered during that period. Failure to give notice as  
 6 required by this section is a defense to an action for possession.

7 (b) For sixty (60) days after delivery or mailing of the notice  
 8 described in subsection (a), the person required to give the notice  
 9 shall offer to convey each unit or proposed unit occupied for  
 10 residential use to the tenant who leases that unit. If a tenant fails to  
 11 purchase the unit during the sixty (60) day period, the offeror may  
 12 not offer to dispose of an interest in that unit during the following  
 13 one hundred eighty (180) days at a price or on terms more  
 14 favorable to the offeree than the price or terms offered to the  
 15 tenant. This subsection does not apply to a unit in a conversion  
 16 building if the unit will be restricted exclusively to nonresidential  
 17 use or the boundaries of the converted unit do not substantially  
 18 conform to the dimensions of the residential unit before  
 19 conversion.

20 (c) If a seller in violation of subsection (b) conveys a unit to a  
 21 purchaser for value who does not have knowledge of the violation:

22 (1) the recordation of the deed conveying the unit; or

23 (2) in a cooperative, the conveyance of the unit;

24 extinguishes any right a tenant may have under subsection (b) to  
 25 purchase the unit if the deed states that the seller has complied  
 26 with subsection (b). However, the conveyance does not affect the  
 27 right of a tenant to recover damages from the seller for a violation  
 28 of subsection (b).

29 (d) If a notice of conversion specifies a date by which a unit or  
 30 proposed unit must be vacated and otherwise complies with  
 31 IC 32-30-3 or IC 32-31-6 (whichever is applicable), the notice also  
 32 constitutes a notice to vacate specified by the applicable statute.

33 (e) This section does not allow termination of a lease by a  
 34 declarant in violation of its terms.

35 Sec. 13. (a) Express warranties made by a seller to a purchaser  
 36 of a unit, if relied upon by the purchaser, are created as follows:

37 (1) An affirmation of fact or a promise that relates to the unit,  
 38 its use, or rights appurtenant thereto, area improvements to  
 39 the common interest community that would directly benefit  
 40 the unit, or the right to use or have the benefit of facilities not  
 41 located in the common interest community, creates an express  
 42 warranty that the unit and related rights and uses will

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conform to the affirmation or promise.

(2) A model or description of the physical characteristics of the common interest community, including plans and specifications of or for improvements, creates an express warranty that the common interest community will conform to the model or description.

(3) A description of the quantity or extent of the real estate comprising the common interest community, including plats or surveys, creates an express warranty that the common interest community will conform to the description, subject to customary tolerances.

(4) A provision that a purchaser may put a unit only to a specified use is an express warranty that the specified use is lawful.

(b) Words such as "warranty" or "guarantee" or a specific intention to make a warranty are not necessary to create an express warranty of quality. However, a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty.

(c) A conveyance of a unit transfers to the purchaser all express warranties of quality made by previous sellers.

Sec. 14. (a) A declarant and a dealer warrant that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

(b) A declarant and a dealer impliedly warrant that a unit and the common elements in the common interest community are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by the declarant, or made by a person before the creation of the common interest community, will be:

(1) free from defective materials; and

(2) constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner.

(c) A declarant and a dealer warrant to a purchaser of a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

(d) Warranties imposed by this section may be excluded or modified as specified in section 15 of this chapter.

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(e) For purposes of this section, improvements made or contracted for by an affiliate of a declarant are made or contracted for by the declarant.

(f) A conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality.

Sec. 15. (a) Except as limited by subsection (b) with respect to a purchaser of a unit that may be used for residential use, implied warranties of quality:

(1) may be excluded or modified by agreement of the parties; and

(2) are excluded by expression of disclaimer, such as "as is", "with all faults", or other language that in common understanding calls the purchaser's attention to the exclusion of warranties.

(b) With respect to a purchaser of a unit that may be occupied for residential use, a general disclaimer of implied warranties of quality is not effective. However, a declarant and a dealer may disclaim liability in an instrument signed by the purchaser for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into and became a part of the basis of the bargain.

Sec. 16. (a) Unless a period of limitation is tolled under IC 32-25.5-3-11 or affected by subsection (d), a judicial proceeding for breach of an obligation arising under section 13 or 14 of this chapter must be commenced within six (6) years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than two (2) years. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by a separate instrument executed by the purchaser.

(b) Subject to subsection (c), a cause of action for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(1) as to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or at the time of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(2) as to each common element, at the time the common element is completed or, if later, as to:

(A) a common element that is added to the common interest community by exercise of development rights, at

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the time the first unit which was added to the condominium by the same exercise of development rights is conveyed to a bona fide purchaser; or

(B) a common element within any other part of the common interest community, at the time the first unit is conveyed to a bona fide purchaser.

(c) If a warranty of quality explicitly extends to future performance or duration of an improvement or a component of the common interest community, the cause of action accrues:

(1) at the time the breach is discovered; or

(2) at the end of the period for which the warranty explicitly extends;

whichever is earlier.

(d) During the period of declarant control, the association may authorize an independent committee of the executive board to:

(1) evaluate and enforce by any lawful means warranty claims involving the common elements; and

(2) compromise the claims.

Only members of the executive board elected by unit owners other than the declarant and other persons appointed by those independent members may serve on the committee. The committee's decision must be free of any control by the declarant or a member of the executive board or officer appointed by the declarant. Costs reasonably incurred by the committee, including attorney's fees, are common expenses and must be added to the budget annually adopted by the association under IC 32-25.5-3-15. If a committee is created, the period of limitation for claims for the warranties begins to run from the date of the first meeting of the committee, regardless of when the period of declarant control terminates.

Sec. 17. (a) If a declarant or another person subject to this article fails to comply with any of its provisions or a provision of the declaration or bylaws, a person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages may be awarded for a willful failure to comply with this article. The court, in an appropriate case, may award court costs and reasonable attorney's fees.

(b) Parties to a dispute arising under this article, the declaration, or the bylaws may agree to resolve the dispute by binding or nonbinding alternative dispute resolution, but:

(1) a declarant may agree with the association to do so only after the period of declarant control passes unless the

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1 agreement is made with an independent committee of the  
 2 executive board elected under section 16(d) of this chapter;  
 3 and

4 (2) an agreement to submit to any form of binding alternative  
 5 dispute resolution must be in a writing signed by the parties.

6 Sec. 18. Promotional material may not be displayed or delivered  
 7 to prospective purchasers that describes or portrays an  
 8 improvement that is not in existence unless the description or  
 9 portrayal of the improvement in the promotional material is  
 10 conspicuously labeled or identified either as "MUST BE BUILT"  
 11 or as "NEED NOT BE BUILT".

12 Sec. 19. (a) Except for improvements labeled "NEED NOT BE  
 13 BUILT", the declarant shall complete all improvements depicted  
 14 on a site plan or other graphic representation, including plats or  
 15 plans prepared under IC 32-25.5-2-9, whether or not the site plan  
 16 or other graphic representation is contained in the public offering  
 17 statement or in promotional material distributed by or for the  
 18 declarant.

19 (b) The declarant is liable for the prompt repair and  
 20 restoration, to a condition compatible with the remainder of the  
 21 common interest community, of a part of the common interest  
 22 community affected by the exercise of rights reserved pursuant to  
 23 or created by IC 32-25.5-2-10, IC 32-25.5-2-11, IC 32-25.5-2-12,  
 24 IC 32-25.5-2-13, IC 32-25.5-2-15, or IC 32-25.5-2-16.

25 Sec. 20. In the case of a sale of a unit in which delivery of a  
 26 public offering statement is required, a contract of sale may be  
 27 executed, but interest in the unit may not be conveyed until the  
 28 declaration is recorded and the unit is substantially completed, as  
 29 evidenced by a recorded certificate of substantial completion  
 30 executed by an independent architect, surveyor, or engineer, or by  
 31 issuance of a certificate of occupancy authorized by law.

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